

REVIEW OF RAMSPECK ACT

Y 4. G 74/9:S, HRG. 104-107

Review of Ramspeck Act, S. Hrg. 104-...

HEARING

BEFORE THE

SUBCOMMITTEE ON POST OFFICE AND
CIVIL SERVICE

OF THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

MAY 8, 1995

Printed for the use of the Committee on Governmental Affairs



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REVIEW OF RAMSPECK ACT

MONDAY, MAY 8, 1995

U.S. SENATE,
SUBCOMMITTEE ON POST OFFICE AND CIVIL SERVICE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:28 p.m., in room SD-342, Dirksen Senate Office Building, Hon. Ted Stevens, Chairman of the Subcommittee, presiding.

Present: Senators Stevens, McCain, and Pryor.

Senator STEVENS. Since Senator McCain is here, let us break precedent and start a little bit ahead of time.

OPENING STATEMENT OF SENATOR STEVENS

Senator STEVENS. Today's hearing is to review the Ramspeck Act, the intent of the act, the use of the act, and the misuse of the act, if any. Based upon this hearing, we intend to ask the Governmental Affairs Committee to make recommendations to the Senate on the future of the act.

The Ramspeck Act of 1940 was intended to allow the Federal Government to retain the services of persons who have served at least 3 years as congressional employees. The act allows Federal employees who become unemployed, through no fault of their own, primarily because of retirement, defeat or death of their sponsor in Congress, to apply for appointment to Executive Branch career positions for which they are qualified. They must apply for these jobs within 1 year of separation from the Legislative Branch.

Our first witness this afternoon is Senator John McCain, a member of this Subcommittee who has introduced S. 177 to repeal the Ramspeck Act.

Next, we will hear from the Director of the Office of Personnel Management, Jim King, then from Nancy Kingsbury, General Government Division at the GAO.

At the request of Senator McCain, our final witness is Mark Levin, Director of Legal Policy at the Landmark Legal Foundation.

Representatives of various Federal employee unions and Federal management associations were given the opportunity to testify today. Most have responded that their members have not had problems with the use of the Ramspeck Act authority. Letters from the Social Security Management Associations, the Professional Management Association, and the Federal Managers Association will be placed in record.

PREPARED STATEMENT OF SENATOR STEVENS

Good afternoon. Today's hearing is to review the Ramspeck Act: the intent of the act, the use of the act, and the misuse of the act, if any. Based upon this hearing we intend to ask the Governmental Affairs Committee to make recommendations to the Senate on the future of the act.

The Ramspeck Act of 1940 was intended to allow the Federal Government to retain the services of persons who have served at least 3 years as congressional employees.

The act allows Federal employees who became unemployed through no fault of their own—primarily because of the retirement, defeat, or death of their sponsor in Congress—to apply for appointment to executive branch career positions for which they are qualified. They must apply for these jobs within 1 year of separation from the legislative branch.

Our first witness this afternoon will be Senator John McCain who is also a member of this Subcommittee. Senator McCain has introduced S. 177 to repeal the Ramspeck Act.

Next, we will hear from the Director of the Office of Personnel Management, Jim King; then Nancy Kingsbury of the General Government Division at the General Accounting Office.

At the request of Senator McCain, our final witness is Mark Levin, Director of Legal Policy at the Landmark Legal Foundation.

Representatives of the various Federal employee unions and Federal management associations were given an opportunity to testify today. Most have responded that their members have not had problems with the use of Ramspeck Act authority. Letters from the Social Security Management Associations, the Professional Managers Association, and the Federal Managers Association will be placed in the record.

Robert Tobias, President of the National Treasury Employees Union, was unable to appear in person this afternoon because of a scheduling conflict and has requested that his prepared statement be submitted for the record. In addition, John Sturdivant, President of the American Federation of Government Employees, has submitted testimony for the record. And, the Senior Executives Association has requested that they be able to submit testimony for the record.

Our witnesses have been asked to limit their opening statements to not more than ten minutes—the full text of the prepared remarks will, of course, be included in the hearing record. I would like to take this opportunity to thank all of our witnesses for supplying copies of their testimony in such a timely fashion.

Senator STEVENS. Robert Tobias, President of the National Treasury Employees Union, was unable to appear in person this afternoon because of a scheduling conflict and has requested that his prepared statement be submitted for the record. It will be part of the record.¹

In addition, John Sturdivant, President of the American Federation of Government Employees, has submitted testimony for the record, and the Senior Executive Association has requested that they be able to submit testimony for the record, and we will keep the record open for 10 days in order to receive that and any other testimony.²

Our witnesses have been asked to limit their opening statements to not more than 10 minutes. The full text of all prepared remarks will, of course, be included in the hearing record.

We would like to take this opportunity to thank all of our witnesses for complying with the Committee's rules and providing copies of their testimony in such a timely fashion.

Senator MCCAIN.

¹ See page 48.

² See pages 49 and 53.

TESTIMONY OF HON. JOHN McCAIN, U.S. SENATOR FROM THE STATE OF ARIZONA

Senator MCCAIN. Mr. Chairman, I would ask that my complete statement be made part of the record and I will make very brief remarks, Mr. Chairman.

Mr. Chairman, I thank you for holding this hearing and I know you have a long and abiding dedication to improving the Federal civil service system, and I appreciate the opportunity to testify.

I believe that the Ramspeck Act has become a heavily-manipulated political tool to award lifetime employment status to former congressional employees. Its loopholes continue to be taken advantage of by agency managers and Hill staffers alike. If a former legislative staffer has the expertise and experience to ably fill a career civil service slot, I believe it is entirely fair for them to demonstrate their abilities in a competitive process, just like other capable and talented applicants are required to do.

As you have noted, Mr. Chairman, under the Ramspeck Act, Legislative Branch employees are given the status necessary for direct appointment to a civil service position if they are involuntarily separated from their job. They are allowed 1 year from their date of separation in which to exercise this privilege which, by the way, has been abused in the past, and I will mention a couple of examples.

Furthermore, the act waives any competitive examination should one be required to rank job applicants. In effect, if any competitive measures are required to rank candidates for a certain civil service position, former congressional staffers are permitted by the Ramspeck Act to effectively skip those hurdles. Any member of this select group of career job seekers can then be immediately hired.

Finally, individuals appointed under this act become career employees in the civil service without regard to the tenure of service requirements that exist for other civil service employees. Most people who have successfully competed for a position with civil service must then serve for 3 years before they achieve full career status with their agency. Ramspeck appointees, however, are afforded with career status immediately.

Mr. Chairman, I would like to note that I read with great interest a piece on Ramspeck in a March 1994 National Journal. A retired director of civilian personnel for the Army described the Ramspeck Act as discriminatory and said it contradicts the merit system. A former head of OPM under President Reagan recommended the repeal of the Ramspeck Act which he described as "one of the innumerable provisions undermining the merit principle. There is no real justification for it."

Finally, the then-president of the Council for Excellence in Government said, "The political people can get political appointments at any time through Schedule C or non-career SES. I just do not see any reason to give special treatment to congressional staff members. I think Ramspeck has outlived its usefulness."

Mr. Chairman, one political appointee at the Department of the Interior joined the staff of a retiring senator for a total of 11 days. She then utilized Ramspeck to secure a new career job at Interior at over \$70,000 a year. Another political appointee at Interior quit, took a one-week job with a congressman who had just lost his re-

election race. He earned a grand sum of \$26.67 before returning to Interior with a career appointment courtesy of Ramspeck.

I think it is clearly time for this legislation to be done away with and I think that it is important to recognize that the legislation I have proposed would have no impact on any former Senate or House employees who lost their jobs in the last elections. I fully realize that while the results of this November's election caused a very large number of involuntary job losses among Democratic legislative employees, Republican staffers have utilized their eligibility under the Ramspeck Act to gain preference in seeking a civil service job after other elections.

I thank you, Mr. Chairman, and I appreciate the time you are taking. I believe that the American people think that everybody should be treated the same. I think the Ramspeck Act is an aspect of employment that is not. Thank you, Mr. Chairman.

[The prepared statement of Senator McCain follows:]

PREPARED STATEMENT OF SENATOR McCAIN

Mr. Chairman, I want to thank you for holding this oversight hearing on the Ramspeck Act. I know that you have a long and abiding dedication to improving the Federal Civil Service system, and I appreciate the opportunity to testify before the Subcommittee. As you know, I introduced S. 177—"The Ramspeck Repeal Act,"—during the very first week of the 104th Congress.

S. 177 would repeal the Ramspeck Act after a 2 year period. I firmly believe that the Ramspeck Act is obsolete and unfair, and the time has come to terminate it. I see no reason why a fair and open competition should not be held for highly-paid and highly sought-after career positions so that all qualified citizens can apply, whether they are from the public or private sector.

The Ramspeck Act has become a heavily-manipulated political tool to award lifetime employment status to former congressional employees, and its loopholes continue to be taken advantage of by agency managers and "Hill" staffers alike. If a former legislative staffer has the expertise and experience to ably fill a career civil service slot, it is entirely fair for them to demonstrate their abilities in a competitive process—just like other capable and talented applicants are required to do. There is no justifiable rationale to offer them a "silver parachute" in order to assure them another job at taxpayer expense.

Let me briefly describe the major provisions of the Ramspeck Act to outline why I think it is so unnecessary and unfair. Signed into law in 1940, The Ramspeck Act provides exclusive privileges to legislative and judicial branch employees attempting to secure career civil service positions with the Federal Government. The Ramspeck Act makes a special exception to certain competitive requirements of civil service positions for individuals who have served 3 years in the legislative branch, or 4 years in the judicial branch.

Under the Ramspeck Act, legislative branch employees are given the status necessary for direct appointment to a civil service position if they are involuntarily separated from their job, and they are allowed 1 year from their date of separation in which to exercise this privilege. Furthermore, the Ramspeck Act waives any competitive examination should one be required to rank job applicants. In effect, if any competitive measures are required to rank candidates for a certain civil service position, former congressional staffers are permitted by the Ramspeck Act to effectively skip those hurdles. Any member of this select group of career job seekers can then be immediately hired.

Finally, individuals appointed under this Act become career employees in the civil service *without regard* to the tenure of service requirements that exist for other civil service employees. Most people who have successfully competed for a position with the civil service must then serve for 3 years before they achieve full career status with their agency. Ramspeck appointees, however, are afforded with career status *immediately*.

I find these privileges astonishing. At a time when we are trying to reduce the Federal Government by over 270,000 positions, and when many agencies have announced "hiring freezes," former congressional staffers are being brought in for life under Ramspeck by these same agencies at the GS-15 level, often with salaries in the range of \$70,000-\$90,000 per year!

If a former legislative branch staffer truly has such great skills and expertise that they must be immediately whisked away into a career job in a Federal agency, why shouldn't they compete for the position and prove their worth? Why shouldn't they show their expertise by undergoing the same competitive examinations or reviews that other candidates are subjected to? How would they be disadvantaged by having to serve the same 3-year period in the Civil Service before achieving full career status? I would think in that time they would welcome the opportunity to show their true worth and value to their new colleagues and taxpayers alike.

Of course, the Ramspeck Act is not alone in offering special non-competitive re-employment privileges to a select group of the Capitol Hill elite. White House and other Executive Branch appointees also have procedures to secure career positions without having to be inconvenienced by fair and open competition. I hope these will also be re-examined by this Subcommittee.

Lets take a look at what others familiar with this "perk" have to say about Ramspeck. I'd like to briefly note similar concerns that I read of with great interest in a piece on Ramspeck in a March, 1994 "National Journal" in March of 1994. A retired director of civilian personnel for the Army described the Ramspeck Act as "discriminatory", and said it "contradicts the merit system." A former head of OPM under President Reagan recommended the repeal of the Ramspeck Act, which he described as "one of the innumerable provisions undermining the merit principle," and said "There's no real justification for it."

A Federal personnel expert asked about Ramspeck said, "If you believe in separation of powers, why give preference to legislative branch employees? This is a special privilege that ought to be examined. If we're truly to have an apolitical civil service, these kind of things shouldn't go on. They denigrate the underlying principles of an open and competitive civil service."

Finally, the then-president of the Council for Excellence in Government said "The political people can get political appointments at any time through Schedule C or non-career SES. I just don't see any reason to give special treatment to congressional staff members. I think (Ramspeck) has outlived its usefulness, if there ever was one."

The GAO and media sources have pointed many cases of abuses of the Ramspeck perk. One political appointee at the Department of the Interior joined the staff of a retiring senator for a total of 11 days. She then utilized Ramspeck to secure a new career job at Interior at over \$70,000 per year. Another political appointee at Interior quit took a one-week job with a Congressmen who had just lost his re-election race. He earned the grand sum of \$26.67 before returning to Interior with a career appointment courtesy of Ramspeck. Yet another case featured an individual who re-established their Ramspeck eligibility after 5 years with Interior by taking a congressional staff job for 12 days.

Mr. Chairman, I think it is clearly time for this archaic relic of congressional privilege to be done away with. It is not appropriate for former legislative employees to receive special re-employment privileges that allow them to jump ahead of their fellow citizens when seeking a career civil service position. It is entirely reasonable and equitable to require them to compete for civil service jobs under the same terms that other Americans have to. Leveling the playing field for qualified individuals from the private sector who are interested in entering the civil service is a good idea, and that's an objective that would be advanced with the repeal of Ramspeck.

In examining the propriety of the Ramspeck Act, we must also take a look at specifically which Executive Branch jobs are being classified as "career positions" and then filled with former Hill staffers. Why are "Legislative Affairs" and "Public Affairs" jobs career positions? Is it wise for "Special Assistants to the Director" at major agencies to be career positions, or for "Policy Analyst" slots to be filled non-competitively? I would contend that if these jobs are not political appointments, they should then be competitively filled. The testimony that will be given today by Mr. Mark Levin of the Landmark Legal Foundation goes into great detail in this area, and I think he makes a compelling case for the repeal of Ramspeck.

In proposing the repeal of the Ramspeck Act, Mr. Chairman, let me say quite clearly that I do not wish to reform this unnecessary privilege in a partisan manner. The bill I introduced, S. 177, *would have no impact* on any former Senate or House employees who lost their jobs in the last election. I fully recognize that while the results of this November's election caused a very large number of involuntary job losses among Democratic legislative employees, Republican staffers have utilized their eligibility under the Ramspeck Act to gain preference in seeking a civil service job after other elections.

I strongly believe that the Ramspeck Act affords unfair employment privileges for *Republicans, Democrats, and Independents alike*, to the detriment of other Federal employees, and their fellow citizens who may not have had the opportunity to work

in the legislative branch. Therefore, I hope the Senate will take action this year to terminate this re-employment perk and stop the abuses that continue to occur.

Mr. President, I have great respect for the work done by many legislative and judicial branch staffers, and I sympathize with their aspirations to continue their public service by seeking a professional civil service position. Many legislative and judicial branch employees have skills and experience that can be well utilized in a Federal agency or department. That does not mean, however, that they should be given special re-employment privileges to step in front of equally qualified individuals merely because they worked for a Senator or Congressmen who was defeated for re-election!

when a professional civil service position becomes available, interested and qualified individuals who have decades of experience in the private sector should not be bypassed or shuffled to the side by the swift arrival of former legislative branch staffer. Civil service positions should be filled according to the talents and capabilities of an individual—not on the basis of whether someone recently worked for a Senator, Congressmen, or Federal judge. Surely, no “lifetime employment guarantees” for congressional staffers should be sustained at the expense of other able and talented individuals.

Senator STEVENS. Thank you, Senator. You are a person who has brought about the hearing. We are pleased to examine the subject at your request and look forward to the rest of the hearing. I do not have any questions for you.

Senator Pryor, do you have any opening statement?

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. Thank you, Senator Stevens and thank you, Senator McCain. I just think it is very important to note that non-competitive does not mean unqualified. I think that we need to remember that and I do not think anyone is alleging anything different. But in order for a congressional staffer to Ramspeck, that staffer must be qualified for that position for which he is applying or she is applying.

The GAO is regularly asked by members on both sides of the aisle to review these appointments and these conversions. There is a sort of check and balance throughout this system. I think the GAO performs very thorough review and typically finds that all but a handful of the appointments comply with the regulation and statute. The few that do appear to be improper are then, I think, referred for further action to the agency or to the Office of Personnel Management. As a result of the GAO review, discussed in the May 1994 report, two appointments were actually revoked.

If the GAO finds similar problems after completing their review, requested by Senator Roth, I would imagine that similar action would be taken.

Mr. Chairman, I do have a longer statement I would like to place in the record at the appropriate point and once again I thank you and I thank, Senator McCain.

[The prepared statement of Senator Pryor follows:]

PREPARED STATEMENT OF SENATOR PRYOR

Mr. Chairman, I would like to thank you for holding this hearing today on the Ramspeck Act. I am hopeful that the testimony from our witnesses will explain more fully how the Ramspeck Act works.

The Ramspeck Act applies to Congressional staffers who have worked for Congress for 3 years and who lose their job due to circumstances beyond their control such as the death, defeat, or retirement of the Member or because their job is eliminated because of a lack of funding or work. The staffer then gains “competitive status” to apply for a career position in the Federal Government for which he or she is qualified. In other words, the Ramspeck Act allows the Hill staffer to be treated

like any other career Federal employee applying for a job. The Ramspeck Act does not guarantee any Congressional staffer a job.

The Ramspeck Act is similar to a number of other statutory or regulatory authorities that allows for noncompetitive appointments in the competitive service. For example, Vietnam-era and post Vietnam-era veterans who had active duty service after 1964 are eligible for noncompetitive appointments. Disabled veterans; present and former Foreign Service employees; employees of the Postal Service and the postal Rate Commission; and people who have compensable disabilities of 30 percent or more as rated by DoD or the VA are all eligible for noncompetitive appointments in the Federal government.

It is important to note that noncompetitive does not mean unqualified. In order for a Congressional staffer to "Ramspeck", he must be qualified for the position for which he is applying.

The General Accounting Office (GAO) is regularly asked by Members on both sides of the aisle to review these appointments and conversions. GAO performs very thorough reviews and typically finds that all but a handful of the appointments comply with regulation and statute. The few that appear to be improper are then referred for further action to the agency or the Office of Personnel Management. As a result of the GAO review discussed in the May 1994 report, 2 appointments were revoked. If the GAO finds similar problems after completing their review requested by Senator Roth, I would expect similar action to be taken.

Mr. Chairman, I look forward to hearing from our witnesses today.

Senator STEVENS. Thank you very much, Senator. Your statement will be a part of the record, as well as Senator McCain's, as he requested.

Our next witness is the Honorable James B. King, Director of the Office of Personnel Management.

TESTIMONY OF HON. JAMES B. KING, DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT; ACCOMPANIED BY LEONARD KLEIN, ASSOCIATE DIRECTOR FOR EMPLOYMENT SERVICE

Mr. KING. Mr. Chairman, I would like to introduce the gentleman on my left. He is Leonard Klein, a senior professional staff member, and now an OPM associate director. And your new title is?

Mr. KLEIN. Associate Director for Employment.

Mr. KING. Mr. Chairman and members of the Subcommittee, thank you for inviting us to discuss the Ramspeck Act, which under certain circumstances allows Legislative and Judicial Branch employees to be appointed to the career civil service.

Mr. Chairman, this legislation was passed, as you know, in 1940 and was sponsored by Representative Robert Ramspeck of Georgia, a long-time champion of the merit system who later served as chairman of the United States Civil Service Commission.

The Ramspeck Act was a historic reform measure which brought virtually all of the non-policy positions in the Executive Branch under the competitive civil service at the same time. I believe that about 182,000 positions moved over when the Ramspeck Act was enacted.

It also contained provisions that enabled the Executive Branch to benefit from the pool of talent that exists on Capitol Hill by creating a streamlined appointing process for Legislative and Judicial Branch employees who are separated involuntarily. Both political parties have made use of this authority over the years, although never in large numbers.

Congressional employees who, after at least 3 years of employment, are involuntarily separated from their positions are eligible for Ramspeck appointments.

Certain Judicial Branch employees who lose their jobs through no fault of their own are eligible after serving 4 years. Ramspeck eligibility lasts for 1 year after the person's legislative or judicial employment ends.

Those who are eligible apply directly to Executive Branch agencies and may be appointed to the competitive service without being formally ranked against other applicants. They must meet the same basic qualifications that would be applied if the job were being filled competitively, and they may be appointed to positions for which vacancies have not been publicly announced.

Ramspeck applicants usually do not take a written test. Written tests, by the way, are rarely given to any applicant above entry level. Instead, the hiring agency evaluates the applicant's education and experience, as these relate to the job to be filled and almost invariably, by the way, there are interviews associated with this.

Similar consideration is given to other candidates, including former employees who are returning to the civil service, disabled veterans, former Peace Corps volunteers and General Accounting Office employees, among others. Therefore, such noncompetitive appointments are not unique to the Congress and the Judiciary.

The Ramspeck Act authority appears to have been used sparingly when compared to other noncompetitive appointing authorities. Let me give you an example. In fiscal 1994, there were 12,468 noncompetitive reinstatements of former Federal employees and 6,541 appointments under the Veterans Readjustment Act. By comparison, after the 1986 elections, there were 116 Ramspeck appointments from a pool of more than 1,700 Hill employees who involuntarily left their jobs. Preliminary figures indicate there have been about 120 Ramspeck appointments since last November's elections from a pool of well over 2,500 congressional employees who became eligible.

Certain restrictions apply to Ramspeck appointments. The Hatch Act reform amendments of 1993 prohibit agency officials from accepting or considering political recommendations for jobs that are not political appointments. This means that Members of Congress, Congressional employees, State and local elected officials, and political party officials may not refer applications to Federal agencies or recommend that agencies consider an applicant. However, once an agency receives an application, it can request and consider an evaluation of the applicant's qualifications from his or her former employer.

A Ramspeck appointment cannot be used to fill a position that has been created for a specific individual. In other words, you cannot really create a job out of thin air to accommodate that individual.

Mr. Chairman, before every election, OPM reminds agencies that competitive jobs must be filled on the basis of merit. There are occasional charges of abuse, which OPM investigates. In early 1993, we investigated 11 appointments that appeared inconsistent with the Ramspeck requirements and concluded that two appointments should be terminated because they clearly violated the law.

In the remaining cases, we did not find violations, but worked with the agency personnel staffs to ensure their full understanding

of the Ramspeck authority. Cases of abuse or alleged abuse have been rare when compared with total Ramspeck Act hires.

Mr. Chairman, we would be happy to respond to any questions that you or other members of the Subcommittee may have.

Senator STEVENS. Did you have an additional statement, Mr. Klein?

Mr. KLEIN. No, sir.

Senator STEVENS. Are the Ramspeck appointments fairly well documented in your opinion?

Mr. KING. Yes, Mr. Chairman. By the way, Mr. Chairman, I do not mean to exaggerate this, but you could think of a Ramspeck appointment in the context of the Federal hiring system as being on stage at the Kennedy Center with a full audience and the full lighting on. Ramspeck appointments get more attention than probably any others, with the exception of appointments by the President to be confirmed by the Senate.

As far as agencies are concerned, the people in them follow these very, very closely since there is such high visibility because of the nature of the appointment, Mr. Chairman.

Senator STEVENS. Does OPM initiate any investigation of Ramspeck appointees, per se? I mean is it automatic that you review Ramspeck Act appointments?

Mr. KING. No, sir. As you know, the numbers in the past 10 years have been just a little over 600 out of the thousands and thousands of appointments that are made. We are very much on these cases like the fire department. Statistically, they are small. We respond to anything that we hear, and believe me, when something, especially in this area, comes up we hear about it very, very quickly.

The cases that Senator McCain pointed out were brought to, I believe, the Congress' attention, the newspaper's attention, our attention almost simultaneously. That is why I say there is extreme scrutiny on all of these appointments. In this case, when OPM did the investigation, and it was before my arrival, the career side had already moved in.

Also, before or immediately following each election the agency, as a matter of course, meets with the senior personnel in all of the agencies, explaining to them in quite frankly, excruciating detail what the law is, what its intention was, et cetera. In the case cited at the Department of the Interior, there was no question as to the violation of both the spirit and the letter of the law in relation to those appointments.

Senator STEVENS. You just answered one of my last questions. I just have two others. Are you familiar with the GAO recommendations to Congress to limit Ramspeck procedure to employees who have had a specific amount of time, in other words, to prevent returning to Congress just for a short period of time in order to be re-eligible for Ramspeck?

Mr. KING. We would recommend at least 1 full calendar year, Mr. Chairman, no matter how long the previous service was, and I think that would eliminate that particular problem.

Senator STEVENS. Lastly, do your studies show in any way how long these Ramspeck employees have stayed with the Executive

Branch? Is there any indication how long they were retained by the Executive Branch?

Mr. KLEIN. No, sir, we have no such information.

Mr. KING. What we are led to believe from what we can see, just from the appointees over the years, is that we do not trap them once they are in. Generally they are folks who stay. They view this as a career move and they perform. The ones that we have seen have performed very, very well, Mr. Chairman.

Senator STEVENS. Three of the people who have been under my supervision since I have been in the Senate have gone to the Executive Branch under the Ramspeck Act. They are all three still there.

Mr. KING. I would have no reason to be contentious with you on that, Mr. Chairman.

Senator STEVENS. Senator McCain?

Senator MCCAIN. Where did you come from before your present job, Mr. King?

Mr. KING. I worked for Senator Kerry of Massachusetts before I came here.

Senator MCCAIN. I see. That explains a lot of things to me, Mr. King. Mr. King, you are saying that you monitor this situation?

Mr. KING. In this case, we do indeed.

Senator MCCAIN. Do you monitor Ramspeck Act appointments?

Mr. KING. As I said, Senator McCain, on the basis of being alerted, because the gross number in relation to the whole Government is relatively small. Mr. Klein, you might want to respond to that.

Mr. KLEIN. Yes, we do include them as subjects of regular visits when the team visits each agency on inspections. However, as Director King mentioned, the numbers are so small that they rarely come up in a statistical analysis of an agency. We have tried to avoid the implication that somehow these appointments are tainted. They are allowed by law. We see that each of the major branches of Government have a similar appointing process. For example—

Senator MCCAIN. I would appreciate if you would answer the question which is, do you monitor Ramspeck appointments? Mr. Klein, we have other witnesses.

Mr. KLEIN. Not case by case, sir.

Senator MCCAIN. I would appreciate if you would just respond to the question, rather than sermonizing, OK?

Mr. KING. Surely.

Senator MCCAIN. Thank you. GAO testimony for today, May 8th, says on page 8, "Because Ramspeck appointments are not routinely monitored or reviewed by OPM, no one knows precisely how many or under what conditions these appointments are made."

Is GAO inaccurate there?

Mr. KING. We have no reason to doubt that what they say is true, any more than we do with all the appointments, sir. We rely on the agency and spelling it out to the agencies. That is basically an implied delegation and a real delegation, sir.

Senator MCCAIN. Do you know precisely how many or under what conditions those appointments are made?

Mr. KING. At the end of the day we do, yes, Senator.

Senator McCAIN. GAO says very specifically, "Because Ramspeck Act appointments are not routinely monitored or reviewed by OPM, no one knows precisely how many or under what conditions these appointments are made. We discussed the merits of routine monitoring and review of Ramspeck Act appointments with OPM officials. They said OPM should not be required to review those appointments."

They added, "There are few appointments of that type and that serious problems with them are fewer still. The most serious problem with Ramspeck appointments, they said involved individuals going back to positions in Congress for short periods to reestablish their Ramspeck eligibility. They suggested changing the act to require that the most recent service in Congress be for a minimum period of time."

"We disagreed with OPM's position on oversight and concluded that more oversight of these noncompetitive appointments was needed, since the circumstances surrounding some of the Ramspeck appointments we reviewed gave the appearance of preferential treatment. We said that appointments to career positions, based on congressional service are essentially or particularly because they are made noncompetitively," et cetera.

I happen to agree with the GAO. You seem to think that there are very few appointments, so relatively inconsequential. I believe that the American people do not think so. I think they think it is very important to know how many and under what circumstances individuals receive preferential treatment.

Mr. KING. Senator, just a question. You suggest preferential treatment. I think what we were saying is that there are a number of areas in which there are noncompetitive appointments that affect literally thousands of employees, and if you look at those thousands of almost virtually identical types of appointees in the process, you will see that Ramspeck has an extraordinary record of performance, and that is all I am suggesting. I am not saying there should not be oversight. I am merely saying that this particular type of problem surfaces very, very quickly, Senator. You are absolutely correct about it being sensitive. It is not a question of how many. If one occurs, we are concerned. I really would like that reflected, sir.

Senator McCAIN. Thank you. "For example, HHS—" this is again quoting from GAO report—"made an appointment to a legislative analyst position during a hiring freeze and justified the appointment as being necessary to effectively carry out all legislative liaison responsibilities. In this instance, however, we found out the legislative analyst was detailed to another position 1 month after the Ramspeck appointment."

One instance at DOL, "An individual submitted a Ramspeck application on November 15, 1994. A new position was created on November 28, 1994, and the individual was appointed on the same date. The proximity of these events can raise the question of whether a career position was created for the purpose of placing a Ramspeck applicant. Our preliminary review of these appointments has shown no evidence that this occurred."

I will not, especially given your background, Mr. King, I will not ask much more questions, except to ask the following rhetorical

question. Someone works on the border between Mexico, has a business on the border between the United States and Mexico. The Mexican economy collapsed and that person is out of a job, loses his or her business. Should that person therefore get some kind of preference for hiring, noncompetitive hiring by the Federal Government?

Mr. KING. If the Congress suggests it, it should. We would work to see if they could get that privilege.

Senator MCCAIN. Again, you failed to answer my question. Thank you, Mr. Chairman.

Senator STEVENS. Senator Pryor.

Senator PRYOR. Thank you, Mr. Chairman. You know, Mr. King, I have a list of a number of other noncompetitive hiring authorities throughout the system. For example, Legislative, Judicial, White House staff, post-Vietnam, and Vietnam-era veterans, General Accounting Office employees, as well as disabled veterans. Secret Service employees involved with protecting the President, people who are 30 percent or more disabled have a preference. Employees of TVA, NRC, DOD, intelligence agencies, and other DOD Non-Appropriated Fund employees, present and former Foreign Service employees are in the noncompetitive area, Presidential management interns, DEA criminal investigators. It goes on for another page or so.

Senator PRYOR. Do you think it serves a legitimate purpose to give these people a noncompetitive hiring preference? Does it mean when they are noncompetitive that they are not qualified?

Mr. KING. I think that what one should consider with respect to eligibles is whether they have made a commitment to public service and have acquired skills and experience during their particular service, regardless of whether it is legislative or law enforcement or within the context of the military or the Peace Corps. Then, can their skills and experience help an agency carry out its mission?

It is a streamlined appointment process that minimizes the loss of important skills to the Federal Government. That is how the agency has viewed it in its historic context. What I am hoping to reflect today is the nonpartisan view that the agency has always had regarding this issue. That is really why I asked Mr. Klein to be with me today.

Senator PRYOR. Very good.

Senator STEVENS. Any other questions, Senator McCain?

Senator MCCAIN. Thank you, Mr. Chairman.

Senator STEVENS. Thank you very much, gentlemen. We appreciate your courtesy in appearing before us today and any further recommendations you have. If there is no objection, I will print in full in the record following Senator Pryor's questions the list that he read so there will be no misinterpretation of it.¹

Mr. KING. Thank you, Mr. Chairman and Senators.

Senator STEVENS. Thank you very much. I appreciate your courtesy.

Senator STEVENS. Our next witnesses are from the General Accounting Office: Nancy Kingsbury, the Director of Federal Human

¹ See pages 55 and 56.

Resources and Management Issues of GAO and Jim Grace, a Senior Evaluator from GAO.

TESTIMONY OF NANCY R. KINGSBURY,¹ DIRECTOR, FEDERAL HUMAN RESOURCES MANAGEMENT ISSUES, GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY JIM GRACE, SENIOR EVALUATOR

Ms. KINGSBURY. Good morning, Mr. Chairman. Good morning, Senator McCain. Morning, afternoon, I am used to morning hearings, I guess.

Senator STEVENS. I sort of missed the morning myself.

Ms. KINGSBURY. It disappeared on us today, did it not?

I have asked Jim Grace to join me today because Jim has been the evaluator in charge, not only on the work that we are doing for Senator Roth, looking at the current range of Ramspeck Act and related matters, but he was also the proud author of the last report we issued on this matter following the Presidential election in 1992.

I think I will ask that you put my statement in the record and be as brief as possible this afternoon. A lot of the points that we made, and in fact many of the facts that we have in our testimony have been presented by other speakers. Thank you, Senator McCain, I appreciate that.

I would like to make a couple of specific distinctions and Senator McCain referred to the case that we report from our current work of a person who returned to the Legislative Branch for a 5-month period and then was appointed to a career position and that is a correct statement. I think it is a different kind of case than the ones we found when we looked at the odd Interior cases before, which were political appointees in the Executive Branch who left jobs in the agency and went back to the Hill to establish Ramspeck eligibility to go back to the agency. I think that is frankly a more egregious kind of problem than this one situation where the woman had worked on the Hill for 5 years, went to the private sector for 5 months, and then came back to an Executive Branch position.

I would also like to make a distinction between the noncompetitive or apparent noncompetitive eligibility that some classes of the employees or potential employees that Senator Pryor mentioned and the Ramspeck authority. It is true, for example, that GAO employees can transfer noncompetitively to the Executive Branch but that is not because of anything like the Ramspeck Act. It is because of the fact that we have our own independent competitive service and all of our people have already been through a competitive process and that is similar to some of the other cases that the Senator mentioned.

We did as you mentioned several times make some recommendations coming out of our prior work, one of which was a very strongly felt recommendation that OPM should, in fact, oversee these appointments. They are very sensitive as long as the law is on the books. And while most of them, in fact, do not violate any procedures, I think the fact that GAO has been around for the last two cycles is probably why they have had as much visibility as they

¹The prepared statement of Ms. Kingsbury appears on page 29.

have had, as opposed to what might happen if someone were not watching them.

We still feel strongly that so long as these kinds of appointments are made, somebody should be looking at them and it is not really our role to do so as a continuing matter. It is much more a matter of the Executive Branch's role. We are continuing to look at these appointments. There have been 107 Ramspeck Act appointments since the beginning of 1994, most of which took place following the election, not a surprise to anyone. That is in 21 agencies.

It is important to recognize that this is less than one-half of 1 percent of the career appointments that were made during that same period. So it is a very small number involved. Of the ones that we have had a chance to look at in detail, there are a couple (Mr. McCain cited the two most prominent, I think) that we are going to carry back to the agencies and explore a little further and we will be looking at all 107 and any more that are appointed between now and the end of the calendar year, as Senator Roth asked us to do.

With that I think I would like to stop and take any additional questions that you both may have.

Senator STEVENS. Similar provisions apply to the Judicial and White House Staff. Have you looked at those appointments to see how that has fared in regard to the same type of circumstances, change in the election or a change in control of a judicial position, for instance?

Ms. KINGSBURY. We do have the White House appointment authority in the scope of our current review and there has been only one White House noncompetitive appointment during the period since the beginning of calendar year 1994. We are not currently looking at, nor do we think there are very many cases of Judicial Branch employees transferring. My sense is that most of those people would be lawyers and they would be eligible for Schedule A appointments anyway, so it is unlikely that they would use the Ramspeck Act, *per se*. We have focused at the request of Congress on the ones coming from the Legislative—

Senator STEVENS. Would you please take Senator Pryor's list and give us what you know about it. I do not want a separate report on each one, but we have Vietnam-era veterans; disabled veterans; Secret Service employees—30 percent or more are disabled—TVA; NRC; DOD; and DOD Non-Appropriated Fund. I did not know until this morning that DOD Non-Appropriated Fund employees apparently have a noncompetitive access. Foreign Service, present and former; Presidential management interns; DEA criminal investigators; employees of the U.S. Postal Service and the Postal Rate Commission, particularly since they have been separated really and a semi-independent status, almost independent status from the Federal Government. Employees in the Administrative Office of U.S. Court; Command Pilot, Pilot and Mission Specialists in the NASA Astronaut Program; graduates of Cooperative Education Programs; National Guard technicians, scientific and professional personnel; former Vista, Peace Corps volunteers, present and former Peace Corps staff; former employees of Panama Canal Commission, and the Panama Canal Commission.

Now all of those, according to the records prepared by the staff and the Committee, have eligibility for noncompetitive appointments. I think it would be important for us to know how frequent those are used and what percentage of the people in the Federal Government have access to employment without regard to the competitive aspects.

Ms. KINGSBURY. Without commenting on each one of those, my sense is that the noncompetitive status arises for different groups of those from different sources, and we would be happy to sort of sort them out for you. It may also be possible to get some numbers about how many of them are appointed. In my own experience, I do know the case of Peace Corps volunteers. The case of Vietnam-era veterans is somewhat similar to the concept of Ramspeck Act. Some of the others, I think, are grounded in the same kind of thing that the General Accounting Office eligibility is grounded in; and that is, an independent merit system. But we would happy to look at that for you and get back to you about that.

Senator STEVENS. I share some of Senator McCain's feelings about Ramspeck abuses. I am not certain about my feeling about Ramspeck, per se, because I have had some personal experience with it after the 1986 election. In 1987, some of the people who were under my supervision and on committee staff positions, just one that year, but there have been a total of three over the years, have gone to the Executive Branch, and I think that the Executive Branch has profited by their experience.

Are there any other ways that a person who is employed by the Congress would have access to the Federal employment without being on a competitive basis?

Ms. KINGSBURY. Not that I am aware of. The competitive appointment is the standard mode in the Federal Government and should be.

Senator STEVENS. For initial access, is it not? But are not there ways that you can negotiate for people with experience from the private sector to come into the Government?

Ms. KINGSBURY. There are some limited term appointments and things of that sort, but for appointment to a career position in the Federal Government normally you would expect to see some form of competition. The competition does not occur in the case of the Ramspeck Act because, at least in its historic grounding, there was a finding by the Congress that people who had served in the Legislative Branch for a long period of time had valuable skills and expertise that in effect made them competitive. There is no reason why they could not also be subject to a competitive process and be likely to come out on top. The ones that I have met certainly are very smart and very knowledgeable and there is no reason to think they could not compete.

But as Mr. King said, it is a streamlined competition process that permits expertise from the Legislative Branch to be brought to bear in the Executive Branch where that makes sense.

Senator STEVENS. I would be interested in the comparison with the graduates of Cooperative Education Programs with people who come from Non-Appropriated Fund employment. I am sure that they have the right to have access to the Federal Government too, but they are coming in on a noncompetitive status apparently

based upon a judgment of Congress that their skills ought to be available to the Federal Government without competition. Could you tell us if that statement is correct, that those people come in without regard to any competitive aspects?

Ms. KINGSBURY. I need to look further into the Non-Appropriated Fund one, because I am less familiar with that. The Cooperative Education Program, however, is a specific agreement between an agency of the Federal Government and an institution of higher education to give students work experience while they are students and in effect they prove themselves as interns and then maybe converted on a noncompetitive basis if they want to continue. But that is only at the entry level. The kinds of appointments that we are talking about under Ramspeck Act tend to be at considerably higher grade levels.

Senator STEVENS. That was my next question. At what level do these people normally come in? What level of entry are we talking about?

Mr. GRACE. We have looked at everyone from Grade 9 through 15 and most of them I think tend to be up around 11, 12, 13 level.

Senator STEVENS. What would be the competitive requirements to enter a Grade 11 level? Would it be based on experience?

Ms. KINGSBURY. From outside the Government, the principal determination would be a measure of experience plus demonstrated salary level. In fact, the determination of what grade a Legislative Branch employee gets under the Ramspeck Act is partly driven by what their Legislative Branch salary was which is common in hiring into those grades.

Senator STEVENS. Is it also driven by length of service in a congressional branch?

Ms. KINGSBURY. Certainly the amount of experience would be relevant to determining whether they were qualified for a more senior position, as opposed to a lesser position, yes, sir.

Senator STEVENS. But have you found abuses of the Ramspeck authority in the sense of ignoring either the experience level or the salary level with regard to entry level into the Executive Branch?

Ms. KINGSBURY. No, sir, we found no indications that the individuals who have been employed are not qualified under the procedures that are used to make that determination.

Senator STEVENS. No examples of people being brought down at higher salaries than they would be eligible for, based upon their experience in the Congress?

Ms. KINGSBURY. No, sir.

Senator STEVENS. Or the years of experience?

Ms. KINGSBURY. Most of them are appointed at very similar salaries to what they had in the Congress; is that right?

Mr. GRACE. That is correct.

Senator STEVENS. Can you give us statistics on how many positions were filled in the entire Executive Branch during the period of 1993 and 1994?

Ms. KINGSBURY. The period that we looked at for that particular comparison was from January of 1994 through March of 1995. The OPM data that we have shows that something in excess of 19,000 career appointments were made in that period of time versus 107 Ramspeck appointments.

Senator STEVENS. 107 out of 19,000?

Ms. KINGSBURY. One-half of 1 percent.

Senator STEVENS. How many of the others were under this non-competitive access?

Ms. KINGSBURY. We do not know that, but I suspect we can find out.

Senator STEVENS. Thank you very much. As I said, I share the feeling that we certainly ought to be interested in the abuses of the system and perhaps there ought to be some better way to state what is a competitive basis for transfer based upon experience from any source, whether it is congressional or Department of Defense or TVA, if there is a work experience equivalent. Could that be done just as easily by administrative regulation?

Ms. KINGSBURY. In terms of further defining qualifications, probably some of it could be, yes.

Senator STEVENS. Could you examine whether we should just give the OPM the authority to establish regulations on what basis there could be access to Federal employment on a noncompetitive status, based upon experience and salary level of the past from any source?

Ms. KINGSBURY. I would assume that you could give them that authority, as well as authority to do the sort of thing that was talked about earlier about establishing minimum periods for the last service in Congress. I do not think the law is what is governing that.

Senator STEVENS. There has been no allegation anyway that people went back to the Judicial Branch or went back to the Department of Defense or to an agricultural employment or Non-Appropriated Fund solely for the purpose of coming in a noncompetitive status that I know of. Are you aware of that?

Ms. KINGSBURY. No, there certainly has been no allegations of abuse that I am aware of.

Senator STEVENS. Maybe Senator McCain's spotlight has not been that broad. I do not know. Senator McCain?

Senator MCCAIN. Thank you, Mr. Chairman. Ms. Kingsbury, maybe you can help us out a little bit. Is there a difference between a noncompetitive appointment and preferential hiring? In other words, if a person who is a veteran goes and applies for a job in the Federal Government, he gets certain credits for having served in the military; is that right?

Ms. KINGSBURY. That is correct.

Senator MCCAIN. Is that what you are talking about when you are talking about the Vietnam veterans?

Ms. KINGSBURY. No, the Vietnam veterans under the Vietnam Veteran Readjustment Act, Vietnam-era veterans have, I think, it is only up through Grade 11, if I am correct—I will have to double check that—have noncompetitive eligibility for direct appointment without competition. That was a special form of veterans preference that was given to Vietnam-era veterans.

Senator MCCAIN. That is up to 11?

Ms. KINGSBURY. I believe it is Grade 11, but I need to check that.

Senator MCCAIN. January of 1995, we talked about denying the Hill aids, find haven at Interior following the Democratic downfall,

and it is interesting to me that all of them were appointed at GS-14 and GS-15.

Ms. KINGSBURY. Most of them are appointed at the higher grade levels. That is correct. It is also important to remember that those people were actually Executive Branch employees when that process started and they left the Executive Branch and went back to the Hill to reestablish Ramspeck eligibility.

Senator McCAIN. For how long had they gone back to the Hill?

Ms. KINGSBURY. In one case, as you cited, a very short period of time, 11 days or so. In other cases, it was a matter of weeks and months.

Senator McCAIN. A burst of patriotic fervor to work on the Hill, so that they would be then eligible for GS-15 jobs. This in my mind is a clear abuse. I do not know anybody else, either a Vietnam veteran or a post-Vietnam disabled person or a Postal Service person or defined service person that can do that.

Ms. KINGSBURY. I believe that is correct and I believe that your characterization of that, as probably inconsistent with the original intent of the Ramspeck Act, is certainly fair.

Senator McCAIN. It seems also that there is hiring going on of Ramspeck appointees during hiring freezes. Do you have any information concerning that?

Ms. KINGSBURY. It is true that a number of the cases that we have looked at in the three agencies where we have actually gone out and examined personnel folders were hired as exceptions to existing hiring freezes and we tried to get a handle on what that meant. In the case of the Department of Health and Human Services, there were a handful of Ramspeck appointments that were made as exceptions to a hiring freeze, but there were 239 other appointments made in that Department as exceptions to the hiring freeze as well.

If you go down and look at the Department of Labor, it is much smaller. They did not have a hiring freeze, so it was not as big a problem and I think Interior was the other one where there were a few Ramspecks and perhaps 20 or so other exceptions, so there are other exceptions.

But particularly the case you cited where an exception was justified based on the urgent need in an office, and then the person was detailed to another position a month later, strikes us as being a little bit less than candid.

Senator McCAIN. In all of these lists, which you will need to provide for the record pertaining to Senator Pryor's comments of those that get positions, are any of those individuals eligible for as high as GS-15?

Ms. KINGSBURY. Peace Corps staff would be. Peace Corps volunteers probably would not qualify for the positions. A Peace Corps staff member and in the Peace Corps, all appointments are temporary appointments. I happened to have worked there myself at the time, so I am very familiar with that, or at one time. If you work for the Peace Corps in a temporary appointment, which all appointments are, for more than 3 years, you establish noncompetitive eligibility at whatever grade you are then qualified for.

For example, if you are the equivalent in the Peace Corps of a Grade 15, you would have qualifications for a Grade 15 in the Executive Branch and there have been some transfers at that level.

Senator McCAIN. And the others?

Ms. KINGSBURY. Co-op Education is entry level positions. Most VRA ones would be lower graded positions. I want to look at that Non-Appropriated Fund one, because I am not as familiar with that as I probably need to be.

Senator STEVENS. Their salary levels are not set by Congress, are they?

Ms. KINGSBURY. Whose salary levels? Non-Appropriated Fund. No, they are not.

Senator STEVENS. But they have an equivalency based upon actual salary.

Ms. KINGSBURY. Largely based on salary. To some extent, based on experience and I think that is worth exploring a little bit.

Senator McCAIN. Maybe it is an academic question, Ms. Kingsbury. But could we not sort of accomplish the same thing rather than a special law that is earmarked only for Hill staffers, as I tried to ask the previous witness? There are people who are victims of unforeseen circumstances. I do not know of a single Hill staffer who comes up here who thinks that he or she has a job for life. It is part of the business that we are in.

If people lose elections, there are changes in majorities. If there is a collapse of the Mexican economy, businesses are shut down all over the border in my State. If there are unforeseen acts of God, life is not fair.

And for us to somehow believe that congressional staffers therefore need a special protection because of the result of elections is simply something that I cannot accept from a philosophical standpoint. When people come and ask to work for me, and I am glad that there are people that do, I do not say, by the way, if I get beat or if my party is out of power, I am going to guarantee you a job, nor do they mention it when they request a position.

The overwhelming majority of them are young people who come here to establish credentials that make them eligible then for much higher salaries because of the experience they gain here working on Capitol Hill. That is why I am flooded with thousands, literally thousands of job applications every year.

I know that part of it has to do with my winning personality, but I think that the other 99 percent of it has to do with the enormous advantages of working on a senator or a Congressman's staff, especially for a person who is young. For us to preserve some special protection for these individuals when there are other Americans out there working hard, and in some cases harder, and who also experience events that are beyond their control, frankly is something that I do not quite understand.

And I might also say that the argument that others do it, I think we ought to examine that, as well, whether these preferences that were put in a long time ago and are no longer applicable. The American people are speaking out very strongly on the issue of preferences and quotas.

Finally, I do not quite understand the logic that if it is only a few people, it is therefore OK. I do not understand that logic. It is

either right or it is wrong. If it is one person or a thousand or 10,000. If it is right, it is right. If it is wrong, it is wrong.

So I would be glad to hear your respond to that diatribe, but I thank you for what I think is an excellent GAO report. It pretty well describes the situation and I appreciate that. It added a lot to my knowledge and I thank you.

Ms. KINGSBURY. Good. Let me say one thing, I guess, in response to what you said. The act as it was originally promulgated and the intention that the legislative history would support, I believe, is not that every Legislative Branch staff member should somehow aspire to and automatically obtain the entitlement. The original intent was a recognition that someone who serves for a long period of time on the Hill in certain roles like specialists on the tax writing committees or something of that sort, would have an expertise that would be contributory in the Executive Branch to furthering the interests of the Government. I think it was that sort of situation that it was originally contemplated to be.

But where to draw the line and why you cannot say the same thing about someone who was a senator's press aide who turns up in a legislative or press position in the career service in the Federal Government. I think you are on much weaker ground making the case there. And reexamining it and seeing whether or not the original purpose stands is certainly timely. But I do not think it was ever intended to be the kind of preferential entitlement that that kind of thing would suggest or indeed that some current usage would suggest.

Senator MCCAIN. Thank you very much, Mr. Chairman.

Senator STEVENS. I am constrained to say we have come awful close to applying the laws that apply to the Federal Executive Branch to Congress. We do not have competitive requirements for hiring.

Ms. KINGSBURY. That is correct.

Senator STEVENS. We have entirely an access based upon a non-competitive status.

Ms. KINGSBURY. That is correct.

Senator STEVENS. I have an underlying agreement with my friend from Arizona that if someone has access to a job on the basis of noncompetition, I do not know why we should waive competition in another area.

But you have made three recommendations basically to us. Looking at page 45 of your report in Chapter 3, "The act could be amended to set a minimum time for the last period of congressional service." Now that would obviously take care of a portion of the ones you have just mentioned.

Or you say, "The act could be amended to preclude or limit eligibility if the latest congressional staff position was accepted when the employing member of Congress had announced his or her retirement, or was not reelected, or when the length of the appointment would be limited for budgetary reasons."

And you throw in an additional, "And Congress might also consider amending the Ramspeck Act to preclude its use as a non-competitive appointment authority while an individual is actively serving in a career status position. This could be accomplished by restricting the act's use to one noncompetitive appointment during

the 1 year period of eligibility. To provide oversight of these non-competitive appointments, Congress may also wish to direct OPM to review noncompetitive appointments as part of its conversion review process."

And the last one sort of is as an aside. Do you have any other recommendations for us today with regard to the actions that Congress might take?

Ms. KINGSBURY. No, sir, I think to the extent we have seen questions about how the Ramspeck authority has been used compared to the intent, as we understand it, these recommendations would cover that. The one having to do with the career status position is covering a situation where someone was appointed to one grade and promoted 2 months later to a grade two steps higher. Both appointments using the Ramspeck authority which we thought was really—to not put too fine a word on it—squirrely.

Senator STEVENS. I do not want to seem impertinent but why did you not suggest that we repeal it, the Ramspeck Act? Has it worked in any way?

Ms. KINGSBURY. I believe that there is, and you raised the question earlier about how many of the people who went from the Hill are still in positions? And that is a question I would like to explore a little bit. We see no basis as GAO for concluding that the authority, as originally construed by Congress is not still serving a useful purpose. That is a policy matter from our perspective for Congress to decide.

The questionable actions that we have found and mind you, we are in the business of having done OPM's job for them and examined every single Ramspeck Act appointment for the last 4 years. The recommendations that we did make would take care of the problems that we found as we saw them. I think we would defer to Congress for the fundamental decision about whether this eligibility for congressional staff still makes sense.

Senator STEVENS. Did you examine how many people from the Hill went to the Executive Branch under Schedule C appointments?

Ms. KINGSBURY. We are also looking at that, yes, sir.

Senator STEVENS. You do not have those figures yet?

Ms. KINGSBURY. We have it for the same period of time that—our Ramspeck accounts just happen to have it here, but you are going to have to let me orient myself. During the same period of time, there were 53 Schedule C appointments; 23 non-career SES appointments; 23 Schedule A appointments which are largely attorney positions, but also essentially cannot be examined; and 49 temporary appointments that we are continuing to follow to see whether—

Senator STEVENS. These are all congressional employees that moved downtown?

Ms. KINGSBURY. Yes, sir.

Senator STEVENS. None of them Ramspeck?

Ms. KINGSBURY. No. That is separate and distinct from the 107 Ramspeck Act appointments that we have reported.

Senator STEVENS. What is the total of those?

Ms. KINGSBURY. The total of all of those?

Senator STEVENS. You had four categories there.

Ms. KINGSBURY. Right.

Senator STEVENS. I just wondered if you already totaled them. Do not worry if you have not.

Ms. KINGSBURY. The total would be about 150 and 18 people have successfully competed for career positions who were former Legislative Branch employees, chose to go that route rather than using Ramspeck.

Senator STEVENS. Is there any indication that the access for people from the Hill under those other authorities ought to be examined?

Ms. KINGSBURY. We have not looked in detail at any of those cases, but the appointment of Schedule C and non-career SES is purely a political matter and nothing that we would be likely to see as questionable.

Senator STEVENS. Any further questions, Senator?

Senator MCCAIN. No, thank you, Mr. Chairman.

Senator STEVENS. Thank you very much. I would appreciate your courtesy if you would give us those statistics, and if you have any further recommendation, would be happy to receive them, Ms. Kingsbury. Thank you, Mr. Grace.

Ms. KINGSBURY. I would like to get that list of Senator Pryor's.

Senator STEVENS. It is right here, ma'am. We will send it to you right now.

Senator STEVENS. Mr. Levin, Director of Legal Policy for the Landmark Legal Foundation. Thank you.

TESTIMONY OF MARK R. LEVIN,¹ DIRECTOR OF LEGAL POLICY, LANDMARK LEGAL FOUNDATION

Mr. LEVIN. Thank you, Senator. I will try and summarize my diatribe here, if I can have this testimony introduced fully.

Senator STEVENS. All of the statements have already been printed in full in the record.

Mr. LEVIN. Mr. Chairman and members of the Committee, my name is Mark Levin. I am Director of Legal Policy for Landmark Legal Foundation, a public interest legal foundation based in Kansas City, Missouri, with offices in Washington. I am here today to testify in favor of Senator McCain's legislation which actually repeals part of the Ramspeck Act.

But before I get to this, there were some points raised I would like to touch on and then complete my summary of the testimony. I am not familiar with the list Senator Pryor read, but I do not believe, based on my one time hearing of the list, that any of the organizations or groups of people on that list has among one of the primary qualifications serving in a political position. But again, I do not have that list.

Senator STEVENS. I think that is a fair assessment.

Mr. LEVIN. In addition, I have not heard OPM or GAO talk about any studies, and I do not know if they could do any studies, that indicate how many civil servants were equally qualified or more qualified for the positions that went to Ramspeck appointees, or how many civil servants would have liked to have had the oppor-

¹ The prepared statement of Mr. Levin appears on page 36.

tunity to compete for the positions that went to Ramspeck appointees.

Also, I think a good measure of interest in Ramspeck appointments would be to check the House or Senate offices that keep track of requests for Ramspeck-related forms that certify how many years a staffer worked on the Hill, whether he is qualified, whether he is a person in good standing, and so forth. And I think the Committee will at least have an idea, not perfect, but an idea of what is going on as to the number of requests and the pressure for Ramspeck appointments.

Just as an observation of things I have heard and read, I think it is interesting that if the purpose of Ramspeck is to protect professional Congressional staffers, it is odd that staffers receive protection on the way out of Congress—on the way out the door—but not on the way in the door. And that is why I think it is a bit incongruous that when you come in the door, as Senator McCain said, you are an at-will employee. If a Senator does not like the way you are dressed or does not like the way you pounded the table that day, you can be removed without explanation.

Senator STEVENS. I am not so sure that is correct any more.

Mr. LEVIN. Maybe not. In any event, on March 26, 1994, the National Journal reported, "The Ramspeck Act gives a leg up on Executive Branch jobs to congressional and judicial branch employees with at least 3 years of total service who are involuntarily separated from their jobs, if their bosses die, retire or are defeated, for instance, or if their jobs are restructured out of existence. They avoid the regular competitive process and are given immediate and highly coveted career status."

I will tell you why one group opposes the Ramspeck Act. First, we think it undermines fair play and fair competition. There should not be one employment standard for the staff of those who represent the people and another standard for the people they represent, exclusive of Senator Pryor's list, as it turns out.

The Ramspeck Act runs counter to fair play and fair competition, which are principles embraced and cherished by the American people. I think to some significant extent it undermines the electorate. The Ramspeck Act undermines the electoral process because, for instance, when citizens vote to remove a member of Congress and vote for a change in policy and leadership, they do not expect to trigger a specially crafted fast-track hiring mechanism enabling eligible aids of that defeated Member to gain lifetime job security at their expense.

Moreover, when Congress announces cuts in personal and committee staffs, I do not believe the American people anticipate that certain unemployed Hill staffers will, as a direct result of those reductions, become eligible for permanent career positions in the Executive Branch. But many do. And when an ex-staffer receives a Ramspeck appointment, the cost shifts from Congress to the Executive Branch. So the taxpayers still pay.

I believe Ramspeck undermines, to a great extent, the civil service system. The Ramspeck Act creates a mechanism and opportunity to appoint political and ideological partisans to civil service positions. I am not saying that always happens. I am saying the opportunity exists. The fact is that the overwhelming number of

Ramspeck appointments during Republican administrations come from Republican ranks and during Democratic administrations come from Democratic ranks.

This practice is in full display right now at the Interior Department. The public record shows, for instance, that in the first few months after the November 8, 1994, election, the Interior Department hired 15 former staffers under the Ramspeck Act, all worked for congressional Democrats.

Twelve of the 15 now hold senior career positions and are paid at the GS-14 or 15 levels, meaning they earn from \$60,925 to \$93,166 a year. Specifically, the Interior Department positions these ex-Hill staffers reportedly fill include the following, and I will try and go through these quickly:

Manager of International Activities and Marine Minerals, Minerals Management Service. Why was this position not competed?

A Program Manager, Fish and Wildlife Service. Why was this position not competed?

Legislative Specialist, Fish and Wildlife Service. Why is this a career position?

Team Leader, Bureau of Land Management's Public Affairs Office. Why is this a career position?

Two public affairs positions, Bureau of Land Management's Public Affairs Office, reporting to that team leader. Why are these career positions?

Special Assistant to the Director of Bureau of Land Management. Why is that a career position?

Senator STEVENS. If you are asking questions, we limited the number of Schedule C's. The departments had to reclassify a whole series of those positions.

Mr. LEVIN. But a Hill staffer has the right like any other citizen, in the career positions, to compete for them. What we are talking about here is not whether they are qualified, but whether they are going to compete for a position or get in the front of the line.

So with respect to some of these positions, I think there is a question of whether they should be non-career if they are traditionally career.

If you have somebody up here with 20 years experience on the Energy and Resources Committee, my guess is he has a pretty good shot at getting a civil service position, if the position exists or was created for fair competition.

And also, during my 8 years as a political appointee in the Reagan administration, it is my recollection that you can go to OPM and ask for additional political slots—they reserve pools of non-career SES appointments and Schedule C's. So it would depend on what Congress passed as to what limit there would be for available political jobs in each department, I would think.

I will not read all the Interior Department list, but there are 15 positions. And my question in each case is, why are some career; why are some non-career?

Here is a practical problem: You are the new head of the Bureau of Land Management, a Presidential appointee. Of three public affairs people, two come from George Miller's staff, and one comes from somebody else's staff. Your special assistant comes from another Democrat Congressman's staff and you are a Republican. You

now have four Civil Service staffers that you may not have enough confidence in to want them to speak for you to the press or Congress.

Now the question is what happens? What can you do about it? As a practical matter, typically you hire a political appointee to oversee the four career staffers or you try to figure out a legal way to move them into other positions without litigation, which means you have to find an equivalent or even better position and hope they will accept it. So in many instances you're tying the hands of very senior level, Republicans and Democrats Executive Branch appointees.

I have a couple more points. Interrupt me if you wish as I am just trying to get through all of this.

Senator STEVENS. You have plenty of time.

Mr. LEVIN. The point is this, you are not hiring the best qualified person for the job because you do not know if you are hiring the best qualified person for the job. You are hiring a qualified person for the job assuming the process is not misused. And in the case of the Interior Department in the last 4 months, at least, the number one qualification is that you are a Democrat. Fifteen out of 15, I do not think that is a coincidence. I do not know if anybody has looked at those 15 slots to determine when these jobs were created; how they were created; and whether there were 3 or 4 civil servants who might have wanted one of those public affairs jobs that did not get a shot at it.

Finally, the last point. I think particularly now where the President is talking about eliminating 272,900 positions, it is going to cost the taxpayers a lot of money. You know, Senator, your experience through buyouts and reductions in force, they cost money. It is fine to say there is only 107 Ramspeck appointments, but there are bumping privileges. There are all kinds of ways to compete—you could have 1,000 people affected by those 107 positions—people who might otherwise be able to keep a job or get a promotion. Ramspeck denies them an opportunity to compete for these jobs.

And what I found frankly so troubling was after these 15 Ramspeck appointments were made at the Interior Department, the Assistant Secretary instituted a department-wide hiring freeze. I think that is problematic. It shows more than just hiring people who are qualified. It shows hiring 15 people you want in your department very badly, apart from qualifications, not exclusive of it, but at least potentially apart from it.

That is my testimony, Senator.

Senator STEVENS. Before I go on, may I send a message down to Ms. Kingsbury. Would you tell us if you can find out from your statistics—I do not want to know the study—what the breakdown between male and female was on the 107 people?

Ms. KINGSBURY. Yes, sir.

Senator STEVENS. Mr. Levin, let me ask you this. Is your objection to the level of person being hired? Is there a level of what you would agree that there might be just ability to transfer? I am thinking about the Judicial Branch, the Legislative Branch, Executive Branch, based on experience in proven salary level. Is there a level that we ought to allow people to move freely through the Executive Branch without regard to politics and without regard to

this being within 1 year of losing your job through no fault of yours, but should there be ability to transfer freely between the three national branches?

Mr. LEVIN. Congress, too?

Senator STEVENS. Congress and Judiciary and the Executive, is it possible we ought to have a pool of people that could freely transfer?

Mr. LEVIN. I think United States Senators, the United States Congressmen, and the White House need maximum flexibility on the type of people they hire, particularly when we are talking about political appointees. There are 2,000 to 3,000 political appointees in the Executive Branch. I do not know exactly how many political appointees are up here. There are none in the Judiciary, but on the other hand, there is maximum flexibility with respect to the number of senior positions there.

You either have to go one way or the other. You either make Congress more oriented toward the career civil service system, which I think would be a very serious mistake, or you do something about the Ramspeck Act, and I favor abolishing it. But you do something with the Ramspeck Act that does not say that if a Member dies, or if a Member loses an election, cutting staff makes you eligible for a lifetime job. Not that you will get it, but you are certainly eligible. You get to go to the front of the line.

Senator STEVENS. You cannot get any job protection now if they get their work cutting staff right now. It does not mean they have any protection once they get there. If you Ramspeck in, you do not have any guaranteed longevity. You either have to produce or you could be fired is my understanding.

Mr. LEVIN. Senator, I can tell you, having spent 3 years in the Executive Branch, that to fire a civil servant, and I will let GAO and OPM contradict me if they wish, is one massive job. Now you can do it, but you will face lawsuits and you will spend much time on them, and I have as deputy solicitor of the Interior Department some years back.

Senator MCCLAIN. Would Ms. Kingsbury agree with that assessment?

Ms. KINGSBURY. In general, on performance grounds, yes, sir.

Senator STEVENS. We have reduced, I think, Department of Defense by, 40 percent now. And apparently DOD employees have a noncompetitive access.

Mr. LEVIN. There is a bumping mechanism that occurs in seniority, in points, in all kinds of things. So the bottom line is 107 Ramspeck appointments make 107 more career civil servants, who also have families, more vulnerable to unemployment.

For instance, let us take this team leader job. I have never heard of such a job, but I do not doubt one exists at the Interior Department in the Bureau of Lands Management. I could work for 18 years in the public affairs office, starting at a low level position, and working myself up to successively more senior posts. Let's say I am one step away from running that office. And bop, somebody pops in over my head. And then I am told there is a hiring freeze. So you cannot be further promoted.

Senator STEVENS. You remind me of one question I did not ask. Could I ask you and Ms. Kingsbury. Is there any indication that

these people Ramspecked in to other than Washington, DC, offices? Did they go around the country or did they just go into Washington, DC, offices?

Mr. LEVIN. There is no requirement under the law that limits the geography, so I do not know.

Senator STEVENS. I realize that. I do not know, in fact, though what happened. Are they all here in Washington or did they go throughout the country?

Ms. KINGSBURY. No, they are not all here in Washington. We have had to recover some folders from elsewhere.

Senator STEVENS. That is a very interesting aspect of this. You make a good case, Mr. Levin, on one hand and on the other hand, I go back to my own experience. I know three people who Ramspecked—all women. And that is why I asked Ms. Kingsbury about the experience. These were young women who because of changes here lost their jobs and went to the Executive Branch.

Mr. LEVIN. What is interesting, at least at the Interior Department again—I did not have time to go through the whole Government—is that 12 out of 15 positions are GS-14's and 15's, that is pretty senior. I do not know what the makeup is of women or men, but that—

Senator STEVENS. I do not think my employees went down as Grade 15's. Was there a breakdown of how many went in at a specific level? Do we have that in your report? I think we already have it.

Senator MCCAIN. I think she said it was the Grade 11 through 15 with more of them up at the higher end. Is that right, Ms. Kingsbury?

Ms. KINGSBURY. That is correct, sir. We have examined positions, but we asked for information from Grade 9 and up. There were relatively few Grade 9's. Most of them are between 13, 14, 15, up in that range.

Senator STEVENS. Thank you very much. Senator McCain?

Senator MCCAIN. I just have one question, Mr. Chairman.

Mr. LEVIN. Can I just do one thing or my mother will get angry at me. It is Levin, but it is just because I am from Philadelphia. The rest of the world it is Levine. But in Philadelphia, it is Levin.

Senator STEVENS. I was told it was Levine.

Mr. LEVIN. Because I tried to spell it phonetically. It does not work. Sorry, Senator.

Senator MCCAIN. Mr. Levin, what in your view would be a fair and equitable system for people, for example, on this committee staff, who have years of experience, who because of change in party majorities, would then not receive jobs. How would you devise a system where they would have an opportunity to go over to the Executive Branch, if any?

Mr. LEVIN. I would not. And I am going to tell you that a lot of my friends are just as unemployed and dead on the pavement as people up here after the last election. I am telling you people lose jobs on a massive scale at the end of an administration and not just Republican or Democratic. The Bush Administration fired many Reagan appointees. As a matter of fact, most of them. Everybody had to turn in their letter of resignation and most had to get out. Two thousand to 3,000 people hit the pavement and some were

expert on arms control, and some were the greatest brains on agriculture subsidies, or in the Defense Department, and so forth.

Now if they want government jobs, and I do not know where most of them wound up, certainly they are eligible to compete and convert into the career positions. If you all are cutting the Government, they are going to have to look elsewhere, such as in the private sector. I had to and it took a long time.

Senator McCAIN. So your point is, I guess, that when there is a change in party in the Executive Branch then those who are political appointees, they are on their own.

Mr. LEVIN. I will even go further, when there is a change of President, most political appointees are out, even Reagan to Bush. You will not find many people that served 10 or 12 years through both of those administrations.

Senator McCAIN. I thank you very much. Mr. Chairman, I want to thank you for this hearing. I think it adds to the record and I think it is one of those issues that although, as you quite accurately mentioned is, in begging way of numbers, it certainly provides a lot of grist for the mill about special treatment and special privilege and all of that. I think I have learned from this hearing and I appreciate all the witnesses being here and I especially appreciate the GAO and Mr. Levin's issues.

Senator STEVENS. I thank you, too, and I am going to shock you. I am going to join you in reporting this bill before the full committee. I think it is a de minimis type of function that is part of the fabric that is bringing civil service and the system into disregard and I really do not think that we should continue this. I want to examine these others. That is why we are asking about Senator Pryor's list.

But I join you in saying there ought not be a special advantage in the system from having been associated with the political process. We have been trying to get to that through revolving door legislation. I believe that this is just another aspect of the revolving door, if it is examined very carefully. I do believe, however, that we ought to have a better chance for young people to decide whether they are going to make a career in the Judicial Branch, the Executive Branch, or take their opportunities and work with Congress.

But working for Congress is political and those who live by the sword ought to die by the sword. I do not see any reason to bring disrespect or have the public despair about the quality of people in the Executive Branch because of some special consideration we give those who have worked with us here.

I will join you in recommending the bill. We may broaden it, depending upon the report of the GAO to cover some of these other circumstances, if they are similarly causes for disrespect of the system. I believe the case you make today, Mr. Levin, is one to respect the feelings of the public at large that service in the Congress is a matter of privilege and it should bring no special privilege after you leave.

Mr. LEVIN. Thank you.

Senator STEVENS. Thank you very much. The hearing is adjourned.

[Whereupon, at 3:50 p.m., the Subcommittee adjourned, subject to the call of the Chair.]

A P P E N D I X

PREPARED STATEMENT OF NANCY R. KINGSBURY

PERSONNEL PRACTICES—AN OVERVIEW OF RAMSPECK ACT APPOINTMENTS

SUMMARY OF STATEMENT

The Ramspeck Act was enacted to provide an opportunity for congressional employees who had rendered long and faithful service to Members of Congress and were involuntarily separated to apply for noncompetitive appointments to the career service. Under the act, certain conditions must be met. Among other things, a candidate must have worked for Congress for a total of 3 years and must be appointed to a career position within 1 year of separation from congressional employment. The appointing official from an executive agency must ensure that the selected candidate is qualified for the career position.

During the recent presidential transition period, GAO reviewed 50 appointments that were made under Ramspeck Act authority by 17 agencies. While all 50 adhered to procedural requirements, some raised concern. Three appointments were made under circumstances, for example, that could give the appearance that the selected candidates may have received advantages or preferences. Another eight appointments involved circumstances that raised concerns that the act was being applied in situations that it was not designed to address. In these cases, individuals' eligibility for a Ramspeck Act appointment had expired because 1 year had elapsed since their last congressional employment. To reestablish their eligibility, the individuals took short-term assignments in Congress, in some cases knowing that the assignment was limited, and almost immediately began the process to obtain a career appointment through the Ramspeck Act.

Neither the language of the act nor OPM's guidance specifically precluded the use of the Ramspeck Act under the aforementioned circumstances. However, GAO questioned whether its use under such circumstances furthered the purposes of the act. GAO recommended that Congress consider amending the Ramspeck Act to more clearly specify the circumstances under which the use of this appointment authority may not be appropriate. To provide oversight, GAO also suggested that Congress consider directing OPM to routinely review these noncompetitive appointments.

GAO's ongoing review of Ramspeck Act appointments made before and after the November 1994 congressional elections has shown that, for the 15-month period ending March 31, 1995, 107 appointments have been made under this authority. These appointments were made by 21 of the 28 agencies under review. GAO will be reviewing the appropriateness of these appointments as part of its ongoing work.

* * * * *

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss use of the Ramspeck Act to noncompetitively appoint congressional employees to career positions in executive branch departments and agencies. You asked us to discuss our May 1994 report¹ on the use of the Ramspeck Act authority during the recent presidential transition period and our recommendations for modifications to the act. You also asked us to outline the progress of our current efforts to track Ramspeck Act appointments both before and after the recent congressional elections.

In our May 1994 report, we said that 17 agencies, out of 33 that we reviewed, made 50 noncompetitive appointments at the GS/GM-11 level and above from Janu-

¹ *Personnel Practices: Presidential Transition Conversations and Appointments: Changes Needed* (GAO/GGD-94-66, May 31, 1994).

ary 1, 1992, through March 31, 1993, based on the Ramspeck Act. Our current efforts show that 21 agencies, out of 28 that we are reviewing, made 107 noncompetitive appointments at grades 9 and above from January 1, 1994, through March 31, 1995, based on the Ramspeck Act. Our current efforts also show that, during the almost 10-year period between October 1, 1984, and June 30, 1994, 36 agencies made a total of 552 noncompetitive appointments at all grade levels based on the Ramspeck Act (see appendix I).

THE RAMSPECK ACT OF 1940

The Ramspeck Act of 1940, 5 U.S.C. section 3304(c), was enacted to provide an opportunity to those congressional employees who had rendered long and faithful service to Members of Congress and who had acquired valuable experience in government to transfer to a position in the competitive service should their positions on the Hill terminate. Under the act, as interpreted by the Office of Personnel Management (OPM) in its former guidance,² congressional employees can achieve competitive status for transfer if the following conditions are met:

- The employee must have worked for Congress for 3 years (the service need not be continuous).
- The employee must be separated involuntarily and without prejudice. (The employee's record must be good, and the final separation must be due to circumstances beyond the employee's control. These circumstances include the death, defeat, or resignation of the employer, lack of work, lack of funds, or office reorganization.)
- The employee must meet the basic qualifications for the position.
- The employee must transfer within 1 year of separation from the legislative branch. (There is no minimum time for the length of the last congressional appointment.)

Once those conditions are met, the employee acquires "competitive status for transfer." Although not an entitlement to a career position, this status effectively waives the requirement for competitive examination, including passing a written test if one is required. The appointing official who selects a Ramspeck-eligible candidate must ensure that the candidate is qualified for the career position. The official does not have to consider other qualified candidates but must comply with other applicable civil service rules and regulations, including those that prohibit, among other things, discriminating for or against any eligible candidate on the basis of characteristics such as race, gender, or political affiliation.

In addition to congressional employees, the act also applies to any individual who served for at least 4 years as a secretary or law clerk, or both, to a justice or judge of the United States. OPM has oversight responsibility for the noncompetitive appointments of former congressional employees. However, it does not routinely conduct preappointment reviews of these noncompetitive appointments.

Two bills that would repeal the Ramspeck Act have recently been introduced in Congress. S. 177, which was introduced by Senator McCain on January 9, 1995, would repeal the Ramspeck Act 2 years after S. 177 is enacted. Senator McCain has stated that the act affords unfair employment privileges to both Republicans and Democrats alike to the detriment of their fellow citizens who may be equally qualified but may not have had the opportunity to work in the legislative branch. A similar bill, H.R. 913, was introduced by Representative Goss on February 13, 1995. H.R. 913 would repeal the Ramspeck Act immediately.

The Ramspeck Act of 1940 is similar to another noncompetitive appointment authority available to employees who serve in the Office of the President or Vice President or on the White House staff. Section 315.602 of Title 5, Code of Federal Regulations, authorizes appointments to career positions on the basis of White House service for employees who have served at least 2 years and who are appointed without a break in service.

USE OF THE RAMSPECK ACT DURING THE 1992–1993 PRESIDENTIAL TRANSITION

On May 31, 1994, we reported on the results of our examination of the propriety of 121 career appointments in the competitive and senior executive service during the 1992–1993 presidential transition. The career appointments included 50 that were based on the Ramspeck Act. All 50 appointments adhered to applicable proce-

² Parts of the Federal Personnel Manual (FPM), including the guidance on Ramspeck Act appointments, were abolished on December 31, 1994. Essentially, the guidance elaborated on the act's requirements. For example, it discussed the circumstances that would constitute involuntary separation.

dural requirements, but some raised concerns about whether the employees may have received advantages or preferences or the act was being used in situations it was not designed to address.

Three appointments raised concerns about whether the employees may have received advantages or preferences. For example, we found that the General Services Administration (GSA) used the Ramspeck Act to noncompetitively appoint an individual to a GM-13 career position, and shortly thereafter used the act again to reappoint, and therefore in effect noncompetitively promote, the same individual to a GM-15 career position. GSA officials justified this action by stating that the individual did not lose Ramspeck eligibility after receiving the initial career appointment and that the act can be used again for a second career appointment as long as it takes place within 1 year after the individual involuntarily separates from Congress.

The Ramspeck Act as written does not preclude its application to an employee already in a career position. However, such an action raises concerns that the individual received an unfair advantage over other career employees at the expense of merit system principles. In addition to using Ramspeck Act authority for the intended purpose of helping a congressional employee find employment, GSA used the act to reappoint, and therefore in effect noncompetitively promote, the individual two grade levels after just 2½ months of career service. Such an action would not be allowed under civil service regulations.

An additional eight appointments involved circumstances that raised concerns that the act was being applied in situations it was not designed to address. In these cases, the individuals' eligibility for a Ramspeck Act appointment had expired because 1 year had elapsed since their last congressional employment. However, the individuals reestablished their eligibility by accepting short-term congressional staff assignments, in some instances knowing that the assignment was limited, and then almost immediately began the administrative process to obtain a career appointment under the Ramspeck Act.

Neither the language of the act nor OPM's former guidance specifically precluded eligibility under these circumstances. However, we questioned whether the benefits conferred by the act should be available to individuals who return to Congress for short periods after a break in service of more than a year. We also questioned whether a separation should be construed as involuntary in cases where an employee had accepted employment with a Member of Congress knowing that the Member had not been reelected or had announced his or her retirement.

OPM does not routinely monitor and review Ramspeck Act appointments. However, in December 1992, OPM initiated a special review of Ramspeck Act appointments at the Department of the Interior (DOI) after receiving a request from the Chairman of the Senate Governmental Affairs Subcommittee on Federal Services, Post Office, and Civil Service; an inquiry from us about one specific Ramspeck Act appointment; and allegations from DOI employees and other sources that the Ramspeck Act was being used improperly to provide career appointments for political appointees. OPM identified 14 Ramspeck Act appointments made by DOI between January 1, 1992, and January 11, 1993.³ It determined that four of them warranted detailed investigation. Upon investigation, OPM determined that, in two of the cases, DOI had improperly used the Ramspeck Act to appoint individuals to positions specifically created for them. On February 3, 1993, OPM directed DOI to terminate the two appointments. DOI complied. One of the terminated employees appealed DOI's action to the Merit Systems Protection Board (MSPB). MSPB denied the appeal on September 24, 1993, on the grounds that the separation from congressional employment was not involuntary because the employee had accepted an appointment for a limited duration and had been separated at the end of that term.

Because Ramspeck Act appointments are not routinely monitored or reviewed by OPM, no one knows precisely how many or under what conditions these appointments are made. To provide oversight, we said in our May 1994 report that Congress should consider directing OPM to review such appointments. We also said that, because our review identified some Ramspeck Act appointments made under conditions that did not further the purposes of the act, Congress should consider amending the act to provide needed clarity.

We discussed the merits of routine monitoring and review of Ramspeck Act appointments with OPM officials. They said OPM should not be required to review those appointments. They added that there are few appointments of that type and that serious problems with them are fewer still. The most serious problem with Ramspeck Act appointments, they said, involved individuals going back to positions in Congress for short periods to reestablish their Ramspeck eligibility. They sug-

³These 14 Ramspeck Act appointments were included in our review.

gested changing the act to require that the most recent service in Congress be for a minimum period of time.

We disagreed with OPM's position on oversight and concluded that more oversight of these noncompetitive appointments was needed, since the circumstances surrounding some of the Ramspeck Act appointments we reviewed gave the appearance of preferential treatment. We said that appointments to career positions based on congressional service are sensitive, particularly because they are made noncompetitively. We agreed with OPM that the act needed to be amended to specify more clearly the circumstances under which use of this appointment authority may not be appropriate because some Ramspeck Act appointments were made under conditions that did not further the purposes of the act.

As we stated in our earlier report, it remains our position that Congress should consider amending the Ramspeck Act to specifically preclude individuals from returning to Congress for short periods to renew their eligibility. We believe the two approaches set forth in our report would accomplish this:

- The act could be amended to set a minimum time for the last period of congressional service; or
- the act could be amended to preclude or limit eligibility if the latest congressional staff position was accepted when the appointing Member of Congress had announced his or her retirement, had not been reelected, or when the length of the appointment would be limited for budgetary reasons.

We also continue to believe that Congress might consider amending the Ramspeck Act to preclude its use as a noncompetitive appointment authority for an individual actively serving in a career status position. This could be accomplished by restricting the act's use to one noncompetitive appointment during the 1-year period of eligibility. To provide oversight of noncompetitive Ramspeck Act appointments, Congress may wish to direct OPM to review these appointments as part of its review of other types of appointments.

All of these proposed amendments to the act have become much more significant given that OPM's guidance, which had been included in the FPM, was abolished as of December 31, 1994.

USE OF THE RAMSPECK ACT BEFORE AND AFTER THE NOVEMBER 1994 CONGRESSIONAL ELECTIONS

Our current work shows that, for the 15-month period ending March 31, 1995, 25 agencies, of the 28 we are reviewing, made 277 appointments of former legislative branch employees (261), White House employees (1), and schedule C and noncareer SES employees who converted from political to career positions (15). Of the 261 legislative branch employees, 107 went to career positions based on the Ramspeck Act authority (see appendix II.). This represented approximately one-half of 1 percent of the total full-time, permanent career and career-conditional appointments made by all executive branch agencies during calendar year 1994, the most recent period for which OPM has data.

Thus far, we have focused our analysis on three agencies with a total of 27 Ramspeck Act appointments: the Department of Health and Human Services (HHS) with 8; DOI with 13; and the Department of Labor (DOL) with 6 appointments. Two of the three agencies made four temporary limited appointments, HHS one, and DOI three, and subsequently appointed these four individuals to career positions based on the Ramspeck Act. Based on our preliminary review, all 31 appointments adhered to applicable procedural requirements. However, some raised concerns that we plan to pursue further.

One appointment raised the same concern that we had with eight appointments in our May 31, 1994, report, that is, reestablishing Ramspeck Act eligibility by taking short-term assignments in Congress. This appointment took place at HHS and was made on November 21, 1994, to a GS-14 legislative analyst position in the Health Care Financing Administration. The individual had worked in Congress for 5 years (1988-1993). She left her position for one in the private sector on June 14, 1993, and thus her eligibility for a Ramspeck Act appointment expired on June 14, 1994. On July 12, 1994, she took a position as a legislative assistant to a Senator who had announced his retirement in 1993. On November 20, 1994, her congressional staff position was eliminated, and on November 21, 1994, she was appointed noncompetitively to the HHS career position based on the Ramspeck Act. Because this individual knew her congressional position would be temporary, it could appear that a primary reason for taking the position was to renew eligibility for a Ramspeck Act appointment.

We also noted that two of the three agencies—HHS and DOI—reported that several appointments were made at a time when a hiring freeze was in effect. The agencies also provided brief justifications for the appointments. For example, HHS made an appointment to a legislative analyst position during a hiring freeze and justified the appointment as being necessary to effectively carry out all legislative liaison responsibilities. In this instance, however, we found that the legislative analyst was detailed to another position 1 month after the Ramspeck appointment. While we did not find anything wrong with the Ramspeck appointment, the decision to detail the individual 1 month after the appointment can raise the question whether there was a valid need for the position and therefore sufficient justification to bypass the hiring freeze.

Finally, we noted that the dates of several of the appointments made at all three agencies were closely associated with the dates that the individuals submitted a Ramspeck application or a SF-171 and the dates positions were created. For example, in one instance at DOL, an individual submitted a Ramspeck application on November 15, 1994. A new position was created on November 28, 1994, and the individual was appointed on the same date. The proximity of these events can raise the question of whether a career position was created for the purpose of placing a Ramspeck Act applicant. Our preliminary review of these appointments has shown no evidence that this had occurred. However, we believe such circumstances warrant further discussions with agency officials.

We should also note that a November 7, 1994, OPM Interagency Advisory Group Memorandum to agency personnel directors addressed the issue of considering former congressional employees for career appointments. Among other things, it pointed out that, to help avoid the appearance of political favoritism, agencies should generally avoid accepting Ramspeck Act applications unless they are also accepting applications from candidates under other noncompetitive authorities. We will be discussing the implementation of this advice with agency officials as we continue our work.

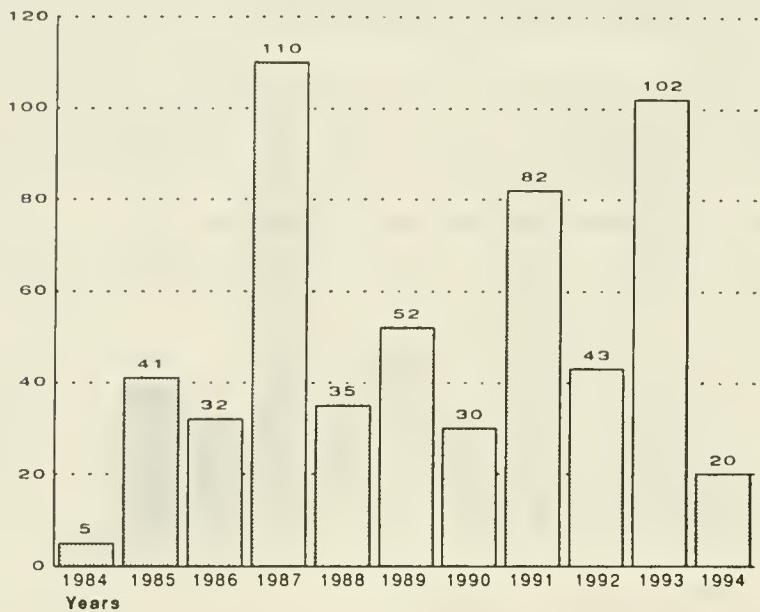
In conclusion, Mr. Chairman, we would like to note that many congressional employees serve long careers and gain invaluable experience working in Congress. This expertise can be transferred to executive branch agencies and help them better carry out their missions. In addition, White House employees are similarly eligible for noncompetitive appointments after 2 years of service and, thus they too can bring their expertise to executive branch agencies. However, we continue to believe that more oversight over Ramspeck Act appointments is needed and that the act needs to be amended to specify more clearly the circumstances under which its use may not be appropriate. We will continue to monitor executive branch appointments through the end of this year.

This concludes my prepared statement. I would be pleased to answer any questions you or Members of the Subcommittee may have.

APPENDIX I

APPENDIX I

NUMBER OF RAMSPECK ACT APPOINTMENTS
OCTOBER 1, 1984 - JUNE 30, 1994

Number of appointments

Source: Office of Personnel Management Central Personnel Data File

APPENDIX II

NUMBER OF RAMSPECK ACT APPOINTMENTS
FOR SELECTED AGENCIES
JANUARY 1, 1994 - MARCH 31, 1995

APPENDIX II

Agency	Number
Department of Agriculture	5
Department of Commerce	7
Department of Defense, Air Force	0
Department of Defense, Army	1
Department of Defense, Navy	2
Department of Defense, Office of the Secretary	4
Department of Education	6
Department of Energy	9
Department of Health and Human Services	8
Department of Housing and Urban Development	5
Department of the Interior	13
Department of Justice	1
Department of Labor	6
Department of State	0
Department of Transportation	7
Department of the Treasury	13
Department of Veterans Affairs	7
Environmental Protection Agency	3
Office of Management and Budget	1
Office of National Drug Control Policy	0
Federal Emergency Management Agency	2
Federal Energy Regulatory Commission	2
General Services Administration	0
Office of Personnel Management	0
Small Business Administration	3
U.S. Information Agency	0
U.S. Agency for International Development	2
U.S. Tax Court	0
TOTAL	107

Source: Agency data

PREPARED STATEMENT OF MARK R. LEVIN

Mr. Chairman, Members of the Committee, my name is Mark Levin. I am Director of Legal Policy for Landmark Legal Foundation, a public interest law foundation based in Kansas City, Missouri, with offices in Washington, D.C. I am here today to testify in favor of repealing the Ramspeck Act.

The Ramspeck Act, passed in 1940 under the sponsorship of Rep. Robert Ramspeck, is a form of affirmative action for congressional staffers. This law should have been abolished long ago. It certainly should have been included among the special privileges and legal exemptions eliminated when Congress passed recently the Congressional Accountability Act—which was intended to apply the same laws to Members of Congress and their staffs that apply to the rest of America. S.177, the “Ramspeck Repeal Act of 1995”—introduced on January 9, 1995, by Sen. John McCain—would remedy this oversight.

On March 26, 1994, the *National Journal* reported:

[The Ramspeck Act] gives a leg up on executive branch jobs to congressional and judicial branch employees with at least 3 years of total service who are ‘involuntarily separated’ from their jobs—if their bosses die, retire or are defeated, for instance, or if their jobs are restructured out of existence. They avoid the regular competitive process and are given immediate—and highly coveted—career status. (Attachment A)

For years Democrats have accused Republicans—and Republicans have accused Democrats—of abusing and politicizing the Ramspeck Act. The Government Accounting Office (GAO) is asked to investigate. It issues findings that one side or the other either endorse or condemn. Far too much of the taxpayers’ money, and congressional time, is used trying to police this flawed law.

The Ramspeck Act is not susceptible to “reform.” To paraphrase Milton Friedman—reforming the Ramspeck Act is like asking a cat to bark. It won’t work. The Ramspeck Act is fatally flawed. The following are several of the key reasons for eliminating it.

Undermines Fair Play and Fair Competition

There should not be one employment standard for the staff of those who represent the people, and another standard for the people they represent. The Ramspeck Act runs counter to fair play and fair competition, which are principles embraced and cherished by the American people. Special privilege and status should not inure to those who manage to gain employment on Capitol Hill, to the detriment and exclusion of equally deserving and qualified citizens.

We have a civil service system in this country because, in part, we decided long ago that the Federal bureaucracy should consist of men and women who receive appointment to public positions primarily through competition and merit selection. Over the years, this notion has been chipped away, with various preferences given to job applicants for reasons having nothing to do with merit. The Ramspeck Act is one of those non-merit based preferences. It was written by Congress to help congressional staffers.

Of course, there is no Ramspeck Act protecting the 2,000 to 3,000 non-career, political appointees who lose their jobs at the end of an administration. There is no Ramspeck Act for the tens of thousands of unemployed IBM, Mobil, U.S. Steel, General Motors, and other private sector workers. There is no Ramspeck Act for the farmers, ranchers, loggers and fishermen who face difficult financial times. There is no Ramspeck Act for the small businessmen who lose life-time investments when their enterprises fail. Yet all of these people have families to care for, and mortgages and bills to pay. It is simply wrong for Congress to continue to give special treatment to its own staff, as a matter of law. Congressional staffers are no better or worse than their fellow citizens.

Undermines the Electorate

In certain significant respects, the Ramspeck Act undermines the electoral process. Indeed, the law is tailored to protect and insulate congressional staff from the electorate. For instance, when citizens vote to remove a Member of Congress—and vote for a change in policy and leadership—they do not expect to trigger a specially crafted, fast-track hiring mechanism enabling eligible aides of that defeated Member to gain life-time job security at taxpayer’s expense.

Moreover, when Congress announces cuts in personal and committee staffs, the American people do not anticipate that certain unemployed Hill staffers will, as a direct result of those reductions, become eligible for permanent career positions in the executive branch. But they do. And when an ex-staffer receives a Ramspeck appointment, the cost shifts from Congress to the executive branch. Of course, the tax-payers still pay the bill.

This "Inside-the-Beltway" behavior does not sit well with the voters. And if it persists, I expect it might stimulate a broader term limits movement that would not only demand limited terms for Members of Congress, but their staffs as well.

Undermines the Civil Service System

The Ramspeck Act creates a mechanism and opportunity to appoint political and ideological partisans to career civil service positions. The fact is that the overwhelming number of Ramspeck appointments during Republican Administrations come from Republican ranks, and during Democratic Administrations come from Democratic ranks.

This practice is in full display right now at the Interior Department. The public record shows, for instance, that in the first few months after the November 8, 1994, election, the Interior Department hired fifteen former staffers under the Ramspeck Act, all of whom worked for congressional Democrats.

Twelve of the fifteen now hold senior career positions and are paid at the GS-14 or GS-15 levels, meaning they earn from \$60,925 to \$93,166 a year. (Attachment B)

The Interior Department positions these ex-Capitol Hill staffers reportedly fill include the following:

- Manager of International Activities and Marine Minerals, Minerals Management Service. (Why wasn't this position competed?)
- A Program Manager, Fish and Wildlife Service. (Why wasn't this position competed?)
- Legislative Specialist, Fish and Wildlife Service. (Why is this a career position?)
- "Team Leader", Bureau of Land Management's Public Affairs Office. (Why is this a career position?)
- Two public affairs positions, Bureau of Land Management's Public Affairs Office (reporting to the "Team Leader"). (Why are these career positions?)
- Special Assistant to the Director, Bureau of Land Management. (Why is this a career position?)
- Assistant to the Reclamation Commissioner. (Why is this a career position?)
- Policy Analyst, Bureau of Reclamation. (Why wasn't this position competed?)
- Issues Manager, Bureau of Reclamation. (Why wasn't this position competed?)
- Congressional Affairs Officer, National Biological Service. (Why wasn't this position competed?)
- Chief for Scientific Planning and Coordination, National Biological Service. (Why wasn't this position competed?)
- Two Legislative Affairs Specialists, National Park Service. (Why are these career positions?)
- Public Affairs Specialist, National Park Service. (Why is this a career position?)

It should come as no surprise that most congressional staffers reflect, or are sympathetic to, the views and policies supported by the Members who employ them. Many staffers are hired by Members not only because they are considered technically competent to do the job, but because of their political associations and loyalties as well (e.g., campaign work).

It is incongruous, therefore, to give these individuals a "leg up" by circumventing the usual competitive process for career employment in the civil service and assigning them immediate career status because, in part, they served in non-career, political positions on Capitol Hill a total of 3 years. If a congressional staff person wishes to join the career ranks in the Federal bureaucracy, and that congressional staffer believes he is uniquely qualified for a given career position, he should compete for the job against others who also believe they are qualified.

Moreover, just as Members want and have the widest latitude in choosing personal and committee staff, senior executive branch officials want and need the same flexibility. In recognition of this fact, 2,000 to 3,000 non-career Schedule C and SES positions were created. It would be reasonable, then, for a Democratic administration to appoint ex-Democratic Hill staffers to these non-career jobs, just as it would be reasonable for Republican administrations to appoint ex-Republican Hill staffers to these non-career jobs.

However, the Ramspeck Act disrupts both the competitive and political appointment process by assigning career status to former Hill political appointees. This can

create a serious management issue for a new, incoming administration. For instance, at the Interior Department, four of the fifteen Ramspeck appointments went to public affairs positions, three went to legislative affairs positions, and two appointments involved a special assistant and assistant to a presidential appointee. If a Republican administration replaces the present administration, its senior officials should be able to appoint people they are comfortable with representing their positions to Congress and the public. By filling these positions with Ramspeck appointments, the current administration imposes its influence on the Interior Department long after it leaves. Of course, such a practice ties the hands of the incoming administrators and may hinder the ability of the new administration to promote its own agenda.

I doubt Members of Congress would accept the imposition of these personnel practices on their own offices for they lead to absurd results.

Undermines Efforts At Downsizing

On March 23, 1995, Sen. William Roth, Chairman of the Senate Governmental Affairs Committee, issued a news release which reported on the GAO's findings relating to non-career appointments made after the 1994 election. Among other things, the GAO found that from December 1, 1994 through February 28, 1995—a mere 3 month period—there were seventy-four Ramspeck appointments. This, at a time when 272,900 Federal employees are leaving the Federal Government through buyouts and reductions in force. (Attachment C)

Moreover, continuing with the Interior Department example, after the fifteen Ramspeck appointments were secured at Interior, Bonnie R. Cohen, Assistant Secretary for Policy, Management and Budget, issued a memorandum on March 13, 1995, stating, in part, the following:

In view of continued downsizing and consolidation of functions, effective immediately a Departmentwide freeze is placed on hiring, at all grade levels, from outside Interior. (Attachment D)

The rush to place ex-congressional staffers in career positions immediately prior to ordering a hiring freeze, and in the face of a government-wide reduction in force, is unreasonable, unjustifiable and no doubt demoralizing to tens of thousands of career civil servants. Nonetheless, this kind of conduct falls within the four corners of the Ramspeck Act.

We endorse S.177—the “Ramspeck Repeal Act of 1995.” If enacted, it will help bring fairness and merit back to the civil service system, and strengthen representative government.

Ramspecked!

The 1940 Ramspeck Act allows some congressional aides to circumvent the traditional civil service hiring process and secure immediate—and highly coveted—career status. But critics say that "Ramspecking" is as good a symbol as any of what's wrong with the labyrinthine federal personnel system.

BY VIVECA NOVAK

Phyllis T. Thompson, known to most as Twinkle, got lots of experience working on Interior Department issues on the staffs of Sen. Barry Goldwater, R-Ariz., and the Senate Select Committee on Indian Affairs. In 1987, she was rewarded with a political appointment to Interior's Bureau of Land Management. But in December 1992, not long after Democrat Bill Clinton was elected President, she jumped back to Capitol Hill—oddly, to the staff of Sen. Steven D. Symms, R-Idaho, who had not run for reelection and would be leaving office on Jan. 3.

Thompson worked for Symms for 11 days. Then she suddenly resurfaced at Interior, drawing an annual salary that's somewhere from \$69,000-\$90,000 in a career civil service job for which she was given preferential consideration.

Thompson was engaged in a neat bit of "Ramspecking." The bizarre-sounding maneuver is great for those who can use it, but not so great for those who happen to believe in a pure merit system or who get edged out of jobs or promotions by Ramspeckers. Although Vice President Albert Gore Jr.'s National Performance Review sparked some hope of sweeping changes in the federal bureaucracy, sources who worked on the "reinventing government" report said that Ramspecking and other preferential hiring systems, which have drawn much criticism over the years, are too hot to handle and probably won't be taken on.

The 1940 Ramspeck Act, named for its chief House sponsor (*see box, p. 719*), gives a leg up on executive branch jobs to congressional and judicial branch employees with at least three years of total service who are "involuntarily separated" from their jobs—if their bosses die, retire or are defeated, for instance, or if their jobs are restructured out of existence. They avoid the regular competitive process and are given immediate—and highly coveted—career status.

In short, it's a perk.

Make no mistake about it: The Ramspeck Act, which results in maybe 100 or so appointments a year, may seem like th-

at more than a speck in center of a federal work force that includes about two million workers not counting the U.S. Postal Service.

"When we're fighting about whether or not there are going to be RIFs [reductions in force], whether or not there are going to be buyouts," said Robert M. Tobias, the president of the National Treasury Employees Union, "this doesn't get to the top of the list."

GAMING THE SYSTEM

But in an environment in which the federal bureaucracy is under intense scrutiny as part of a high-level effort to make it more efficient and more responsive, Ramspecking is as good a symbol as any of what can be so disheartening about the labyrinthine federal personnel system. Seemingly well intentioned, the law can be used to good effect, according to some who have had experience with it. But schemers have found ways to game the system while staying within the letter of the law. And even when it's used as directed, critics say, it's circumvention of the traditional civil service hiring process weakens the system and erodes morale.

"The Ramspeck Act is discriminatory," Frederic Newman, a retired director of civilian personnel for the Army, said. "It contradicts the merit system, and I tried to avoid applying it."

Donald J. Devine, who headed the Office of Personnel Management (OPM) from 1981-85, wrote a memo to Clinton after the election in which he urged him, among other things, to get rid of the Ramspeck Act. "It's one of the unmeasurable provisions undermining the merit principle," Devine said in an interview. "There's no real justification for it. It's basically one of countless benefits of the legislative branch."

The 1992 election provided laboratory conditions for observing the two principal species of Ramspeckers. First, there was a change not only in Administration, but also in party. Former Capitol Hill aides who'd gotten political jobs in the Republican executive branch were looking for

life rafts in the career civil service—various ways to burrow in. Sen. David Pryor, D-Ark., sent the General Accounting Office (GAO) a list of 150 names and 50 department or agency reorganizations that his office had received complaints about in this regard, some of them involving Ramspecking. The GAO's final report is expected out in a few weeks.

Second, 1992 brought the largest exodus of Members of Congress since 1948, and attached to each lawmaker were several aides who were faced with the prospect of finding new employment. Murton Blackwell, a conservative activist, was running seminars in House Annex I on how to Ramspeck. "Conservatives must match the Left's mastery of the Ramspeck Act," he declared (although statistics don't indicate that either party has a lock on this). "Dedicated conservatives now can use non-competitive routes to secure career employment in the federal government . . . In government, personnel is policy."

Without presidential contests in the wings, Ramspecking of the first type will be little practiced until 1996 or later. But the 1992 election brought plenty of it, some of which looked fishy under even a lenient threshold of acceptable transition behavior.

OPM investigating complaints about 14 Ramspeck appointments at the Interior Department in 1992 and early 1993, found that seven political appointees had returned to Congress for periods of only a few days to a few weeks. This reestablished their Ramspeck eligibility; the law doesn't require an employee's three years of congressional service to be continuous, but it does require that the Ramspeck transfer take place within a year of leaving Capitol Hill. While such brief appearances on the Hill between political and Ramspeck jobs seem to be technically permissible, OPM report called them cause for "grave concern." The report went on to say that "it is difficult to conceive that the act was intended as a means to convert political executive branch employees into career civil servants."

OPM zeroed in on two cases. One was that of Timothy Glidden, who held a political appointment as legal counsel to then-Interior Secretary Manuel Lujan Jr. Glidden, a former congressional aide, quit his job at Interior shortly after the election and went on the payroll of Rep. John J. Rhodes III, R-Ariz., who'd just



Robert Ramspeck, 84, served in the House from 1923-46. Thanks to him, congressional aides have a security blanket.

been defeated. He worked there from Dec. 18, earning all of \$26.67. Then he returned to Interior with a Ramspeck appointment as a program analyst in the Office of American Indian Trust.

Some officials of the Interior Department apparently weren't surprised. According to OPM, the job was created for Glidden even before he left. (Glidden told OPM's investigators that he was unaware of that.) The report branded Rhodes's hiring of Glidden and Glidden's return to the Interior Department "a cynical manipulation of the Ramspeck authority to achieve a preordained result—the placement of [Glidden] in a position especially designed for him."

OPM also assailed the recent career path of Hattie Bickmore, who'd worked on Capitol Hill for eight years before she accepted a political appointment in 1991 as a special assistant in the Minerals Management Service. But she left that position for a one-week job (Nov. 9-13) with the Senate Governmental Affairs Subcommittee on Oversight of Government Management, at the request of Sen. William S. Cohen of Maine, its ranking Republican—a particularly ironic placement because the committee sometimes investigates complaints about Ramspeck abuses. On Nov. 16, she was appointed under Ramspeck authority to a career

GM-15 position in Interior's Take Pride in America program.

Bickmore told OPM, among other things, that she wanted to qualify for retirement benefits, for which she'd be eligible in February 1994. And, she said, "It's a known fact that it's all right to go back [to the Hill] to get Ramspeck eligibility reinstated."

But OPM found this case to be much like Glidden's. Affidavits and other evidence indicated that a job was being created for her to return to before she even left. "No reasonable person examining the total situation in these two cases could conclude that these two appointments met either the letter or the spirit of the Ramspeck Act," OPM said. Besides having prearranged, custom-made jobs waiting for them at Interior, Glidden and Bickmore couldn't argue that their departures from their short stays on the Hill were involuntary.

OPM recommended that both Glidden and Bickmore be terminated. Bickmore was fired, and lost her appeal to the Merit Systems Protection Board on March 13 of this year. Glidden departed as well, though it could not be ascertained whether he retired or was fired.

OPM found these two cases the most egregious because jobs were created for them, said Michael D. Clogston, the assistant director of its compliance and evaluation office. "But we found in a number of cases, people were going up [to the Hill] for a quick cup of coffee, in effect," he said. "That conferred upon them eligibility to get a job in the executive branch. And a lot of people are of a mind that if you went up for a quick cup of coffee, that in itself was enough to violate the spirit of the law."

The Ramspeck process "was started for these poor devils who worked long years on the Hill and found themselves out of a job because their boss lost or died," Clogston added. "In the cases we looked at, none of them fit those circumstances."

THE SILVER PARACHUTE

Most who use the Ramspeck privilege come straight from the Hill after the lawmaker they've worked for leaves Congress. That was the intent behind the law. Its legislative history indicates that Members wanted to provide something for their loyal aides who had little job security and could, through no fault of their own, be out of work overnight. Because

they usually had some expertise to offer. The reasoning went, why not allow them to put it to use in another branch of government?

"There was also a strong "me too" motivation. If there is justification for 'blanketing' into permanent civil service positions many thousands of persons, there is certainly justification for granting this opportunity to employees of the legislative branch," said the conference committee's report from 1940, which also noted that a similar provision was available to White House employees.

"On Capitol Hill, you've got these people who are professionals and have no civil service protection—people who have put in years of service, who have some qualifications and know their areas," said Edward J. Gleiman, the chairman of the Postal Rate Commission and a former staff director of the Senate Governmental Affairs Subcommittee on Federal Services, Post Office and Civil Service which Poyar chairs.

Said a former Senate administrative assistant in recounting the vagaries of life on Capitol Hill, "John Heinz's staff goes out to lunch and comes back and they're out of a job." Heinz, a Republican Senator from Pennsylvania, was killed in an airplane crash in 1981.

And some who are on the hiring end of things, in federal departments and agencies, say that Rumspecking offers other advantages. "Generally, I think it's probably a useful thing," said Thomas S. McFee, the assistant Health and Human Services (HHS) secretary for personnel. "These people have had unusual experience and can make a valuable contribution." Rumspecking cuts time-consuming red tape that would otherwise mean advertising a position, ranking and evaluating applicants and so forth, McFee pointed out—and Rumspeck candidates must qualify for the positions they take.

According to a survey by *National Journal*, HHS had by far the largest number of Rumspeck hires—17—of all federal departments and agencies in the 12-month period beginning in December 1992; Interior had 9 and the Agriculture and Veterans Affairs Departments each had 8. Over all, at least 80 workers were hired via Rumspeck appointments in that period (several agencies didn't respond).

Some congressional offices were especially adept at Rumspecking. Former Rep. Gerry Sikorski, D-Minn., for example, sent three aides to dry land that way after he lost in 1992. The Senate Environment and Public Works Committee—after its chairman, Quentin N. Burdick, D-N.D., died—managed to Rumspeck four of Burdick's people. When the House Select Committee on Narcotics Abuse and Control went out of business

early last year, two of its employees were Rumspecked into HHS. Former Rep. Mike Espy, D-Miss., took some aides with him as political appointments when he became Agriculture Secretary, he took three more under the Rumspeck Act.

For all its seeming humanitarian utility, however, the Rumspeck Act seems to have more critics than it does fans or neutral observers.

"If you believe in separation of powers, why give preference to legislative branch employees?" a federal personnel expert asked. "This is a special privilege that ought to be examined. If we're truly to have an apolitical civil service, these kinds of things shouldn't go on. They denigrate the underlying principles of an open and competitive civil service."

Rumspecking is sometimes used as a kind of political appointment, but with indefinite security. Applications for jobs with Rumspeck certifications attached were a common sight in the White House personnel office in the early days of the Clinton Administration.

"I would argue that it's really not necessary," said Mark Abramson, the president of the Council for Excellence in Government, a not-for-profit organization

of former public officials. "The political people can get political appointments at any time through Schedule C or non-career SES [Senior Executive Service]. I just don't see any reason to give special treatment to congressional staff members. I think it's outlived its usefulness, if there ever was one. There's political appointments and then there's the career process."

And clearly, congressional offices can manipulate the process. One gambit plays off the fact that employees are eligible for Rumspecking not only if the Member they work for leaves Congress, but if their office goes through a restructuring that leaves them out of work.

"If [a staff member] is interested in a civil service job, congressional offices will go through the motions of restructuring and certify them for Rumspeck," the staff director of a Senate office said. "If [it] doesn't hurt anything, we will try to do it for them. Of course, we don't say we did it at their request."

Offices also "sometimes say they've restructured and they haven't," the aide added. "The way I look at it is, the quality of life here is pretty low. It's long hours and low pay, and for people with a family,

A LAWMAKER'S LAMENT

What has a legacy. Imagine if, after years of public service, many people mentioned your name only in connection with an employment perk for congressional staff. If they mentioned it at all. In this case, even those who know the ins and outs of the Rumspeck process have no idea who the man was; his name has become a verb.

Georgia Democrat Robert Rumspeck served in the House from 1929-45, a portion of which time he chaired the Civil Service Committee; during his last two years, he was Democratic whip. In the 1930s, he chaired the Civil Service Commission (subsequently absorbed into the Office of Personnel Management and the Merit Systems Protection Board).

Rumspeck seemed to be serving in the interests of long-suffering congressional aides when he introduced legislation to give them an edge in getting into more-secure government jobs if they were thrown out of work on Capitol Hill.

Making a living was a subject near and dear to Rumspeck's heart. His colleagues reportedly were surprised when Rumspeck resigned from Congress at the end of 1945 to take a job as a lobbyist (yes, it was ever thus) with the Air Transport Association. In March of the following year, his byline appeared under the headline "I Couldn't Afford to Be a Congressman" in a first-person piece for *Collier's* magazine. Rumspeck wrote that on a Member's \$10,000-a-year salary, he could "barely subsist," especially because at that time lawmakers financed their own reelection campaigns and there was no provision for retirement pay. Rumspeck proposed a retirement system for Members similar to one that executive branch employees had, it passed, but "editorials denounced us as muckers, as hogs in the public trough"; the entire Congress was breamered, Rumspeck wrote, and the law was rescinded. Congress eventually got its own retirement system.

Rumspeck incidentally, had other complaints about Congress that seem eerily familiar nearly 50 years later. Among them: "I have known of some cases of scared voting by good men who could foresee nothing but disaster for themselves if they antagonized certain groups."

Rumspeck died in 1972.

it's hell. If there are small ways we can bend the rules to make things easier, we do it."

Making things easier for a congressional aide, however, doesn't necessarily make things easier for those on the other end of the process.

"They come in with the support of a Congressman or a Senator, and you're told as a manager that this person is coming in at a given level," said a former agency manager who now works for the White House. "There are sometimes complaints filed by other employees, but the grievances don't hold up because it's legal."

A supervisor's resentment over being forced to hire someone rarely has happy

job," Hoddapp said. He left after two months, returning to his old position on the Hill but this time attached to Rep. Don Young, R-Alaska.

For career civil servants who are hoping to advance, Ramspeck and other preferential appointments, which are often at the highest levels, can "shoot morale right to the bottom," said a former employee of the Small Business Administration, who saw such appointments botch up the promotion hopes of career civil servants in his office. "It affects quality of work, motivation and incentive to achieve."

Ramspeck isn't the only preferential hiring loophole in the federal personnel system. There are, for instance, a veterans preference, a preference for those who have served in the Peace Corps, a measure that in some cases gives priority to Native Americans—even a preference for people who have worked in the Panama Canal system. The huge number of special hiring authorities and arrangements makes it clear that merit—supposedly the backbone of federal personnel policy—is far from the only yardstick used in sizing up candidates.

"The general concept of having a congressional person go to the head of the class is hard to justify in a merit system," the staff director of Senate committee said. "But the precedent has been set; the merit system has been encroached on in other ways. Veterans get preference. I can't justify that, either. We're talking about characteristics that have nothing whatever to do with the ability to do the job."

"The merit system is very disjointed, and the definition of merit is something that truly needs to be reexamined," Patricia W. Ingraham, a professor of public administration at Syracuse University's Maxwell Graduate School of Citizenship and Public Affairs, said. "It's a word that in many ways has lost its meaning."

The multiple layers and tangled strands of the federal personnel system were spotlighted by the National Performance Review's report last fall: The 850 pages of federal personnel law, 13,000 pages of OPM regulations and 10,000

pages of the *Federal Personnel Manual* don't make for efficient and productive government, Gore declared. And there's been some progress. Recently the manual was slashed to 1,000 pages. Federal departments and agencies are supposed to be developing their own hiring guidelines.

But doing away with or reforming Ramspeck and its brethren would require legislation, and no one expects the Clinton Administration, for all its reinvention efforts, to tackle preferential hiring systems head-on. "There was an early look at this," a participant in the National Performance Review said. "The decision was made not to tackle it. It was a strategic decision; we could have had the whole ball of wax. Why throw up red herrings that would have Congress pissed off at us?"

The constituency for Ramspeck, after all, is Congress itself.

"People are staying so far away from this," a top aide to a congressional committee that deals with personnel matters said. "You'd have some trying to eliminate it, others saying it serves a legitimate purpose. But the debate would be around this being a perk for congressional staff, and I for one would not relish that in the current atmosphere" in Washington.

Some would simply argue for better policing of the Ramspeck Act to prevent abuses. Currently there's no central oversight of Ramspeck appointments, something the GAO may recommend in its forthcoming report. OPM's review of Olds' case and a few others covered only the Interior Department and was prompted by a large number of complaints and by requests from a Senate committee; it is the only such review that OPM has ever done, and the agency has no authority or plans to routinely examine Ramspeck placements.

Meanwhile, this year is shaping up as one that will bring turnover on Capitol Hill rivaling that of 1992. As lawmakers retire, run for other office or take their hits at the polls, their staffs will be looking for someplace nice and safe to land—someplace like the civil service. Look for plenty of Ramspeck appointments to wash into the executive branch, triggering the usual complaints from career civil servants—particularly because, as the federal work force, and especially mid-level management, is downsized, there will be more competition than ever for a limited pool of jobs.

Potential Ramspeckers, start your engines. Demand for Ramspeck certification forms is starting to pick up again at the House Clerk's Office, according to records coordinator Robert Duncan. It's a handy bit of paper to have in your hip pocket come election time. ■



Mark Abramson of the Council for Excellence in Government
The 1946 Ramspeck Act is "really not necessary."

consequences. Stephen Hoddapp, a staff member of the House Interior and Insular Affairs Committee for three years and a 17-year veteran of the National Park Service before that, wanted to Ramspeck back to the Park Service after his boss, Rep. Robert J. Lagomarsino, R-Calif., was defeated in 1992. He became the assistant superintendent of Shenandoah National Park over the objections of the superintendent, who was told to hire him by higher-ups. According to Hoddapp, when he arrived, all his duties were taken away and he had nothing to do. "I had no

Federal Lands

An exclusive weekly report covering fuels and minerals onshore and offshore

January 23, 1995

NINE HILL AIDES FIND HAVEN AT INTERIOR FOLLOWING DEMOCRATIC DOWNFALL

Since their party fell from power on Capitol Hill in November, nine Democratic legislative aides have obtained jobs at the Interior Dept. under the so-called Ramspeck Act, which gives congressional staff a preference when applying for career civil service jobs in the federal government.

Their appointments at high-level career positions in the Bureau of Land Management, the Minerals Management Service and the Bureau of Reclamation occur as those same programs are under orders from the Clinton administration to reduce costs and personnel.

All of them took advantage of the 1940 Ramspeck Act, which gives congressional staff members "involuntarily separated" from their jobs the same employment consideration given, for example, to current federal employees seeking to fill a vacancy at their current grade level or former federal workers who are eligible to be reinstated.

A spokesman for the Senate librarian's office said "involuntary" usually means there were circumstances beyond an employee's control, such as the death, defeat or resignation of a lawmaker for whom they work, insufficient work or funds, or a reorganization.

Two former aides to the now-defunct House Merchant Marine and Fisheries Committee are among the new hires at Interior, according to the department's personnel office. Thomas Kitsos is now manager of international activities and marine minerals at MMS, at an annual salary of \$93,166 (GS-15); Daniel Ashe is a program manager at the Fish and Wildlife Service (GS-15). Ashe's salary was unavailable. Ashe had not started his new job as of Thursday.

Kitsos was the merchant marine panel's chief counsel, while Ashe was a senior professional staff member there. The committee's responsibilities were reassigned to other House panels as part of a move by the new Republican leadership to streamline the chamber's operations.

Among the programs that Kitsos oversees is one that trains Russian officials on how to develop environmentally acceptable offshore drilling programs and another involving marine mineral activities, such as using sand and gravel for beach replenishment.

BLM's public affairs office has three Ramspeck hires. Tony Garrett, the former communications director for the Senate Energy Committee and before that a long-time spokesman for Sen. J. Bennett Johnston, D-La., is the "team leader" for the BLM office that handles media and public inquiries (*IE/FL*, 26 Dec. 16), at \$78,682 a year (GS-15).

Two former aides to the House Resources Committee, who worked for ex-Chairman George Miller, D-Calif., will now report to Garrett. They are Celia Boddington, at \$74,765 a year (GS-14), and Lori Sonken, at \$76,733 a year (GS-14).

The defeat of Rep. Jolene Unsoeld, D-Wash., sent a fourth Ramspeck to BLM. Unsoeld's legislative director, James Hoff, is now a special assistant, at \$78,682 (GS-15), to BLM Director Michael Dombeck and is working with the bureau's resource planning team.

The Bureau of Reclamation picked up three new employees through the Ramspeck rules. Paul Bledsoe, former press secretary for Sen. Patrick Moynihan, D-N.Y., on the Senate Finance Committee, is now an assistant to Reclamation Commissioner Dan Beard at an annual salary of \$71,664 (GS-15). Various sources indicated his paperwork is not complete so he currently is listed as a temporary hire on a 30-day detail, beginning last Thursday.

The other two Bureau of Reclamation hires are Dana Cooper, who was counsel to the Senate Energy subcommittee on water and power, and James Hess, a former legislative director for Rep. Sam Gejdenson, D-Conn. Cooper, at \$60,925 (GS-14), will be a policy analyst at the bureau, and Hess, at \$60,925 (GS-14), will be an issues manager. — *Sheryl Morris*

get Congress to approve a bill that had no funding for ESA activities.

Hatfield, who was one of the sponsors of the original Endangered Species Act, said that when it was introduced, he had "no idea that it would be played out on a site-specific, species-specific" basis. Complaining that ratepayers of the Bonneville Power Administration had paid more than \$1 billion since 1980 for fish mitigation at the utility's dams, he said some "consideration of the economic impact" of the act would have to be made.

"We're not looking at the real agenda" of environmentalists' proposals regarding the act, he said. "Really, pulling out dams is the real agenda of radical environmentalists."

AMY HOLLEY JOINS INTERIOR AS ANOTHER RAMSPECK APPOINTMENT. Holley, who was a staff member on the former House Natural Resources subcommittee on national parks, forests, and public lands, has taken a position as a congressional affairs officer for the National Biological Service. The job (GS-14) carries an annual salary of \$60,925.

Holley obtained her position under the Ramspeck Act, which gives congressional staff a preference in applying for career civil service jobs in the federal government. Nine other Hill aides have recently taken positions at Interior under Ramspeck (*IE/FL*, 23 Jan. 13).

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Chief Editor: William E. Loveless

Managing Editor: Jeff Barber

Associate Editors: Sheryl Morris, David Kramer, Lisa Behrens

News Office: 1200 G St., N.W., Suite 1100, Washington, D.C. 20005, (202) 383-2240

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that NBS runs "a very lean shop" with only 10% of its total funds spent on overhead.

It appears Interior "just put another layer on top of what was existing," Regula said, when it created NBS to pull together the department's scientific functions.

It was more like the department "took a layer away," Pulliam countered.

Several Republican members challenged department officials over Interior Secretary Bruce Babbitt's decision to ignore objections of some lawmakers in creating NBS. "The arrogance in which this was put together a year ago has so corrupted" the feeling in Congress toward the agency that it still suffers an image problem with lawmakers, said Rep. Charles Taylor, R-N.C.

Pulliam promised that the agency intends to work closely with Congress.

Rep. David Skaggs, D-Colo., said he thought it was important that as NBS is "headed to the gallows, that I understand your crime." This gave Pulliam an opportunity to describe the benefits of NBS and argue that Republican efforts to defund and disband the agency, returning the functions to home bureaus, would be a "giant step backward."

INTERIOR HIRES 5 MORE EX-CONGRESSIONAL AIDES THROUGH RAMSPECK ACT

The Interior Dept. has added five more former Democratic congressional aides to its staff under a law that gives unemployed Capitol Hill workers a preference in applying for civil service jobs. All told, 15 Democrats have arrived at Interior via the Ramspeck Act.

The new employees join Interior at a time when the department is talking about a hiring freeze because of tightened budgets (*IEFL*, 6 Feb. 20).

Barry Gold, a former professional staff member on what is now the House Science Committee, has moved to the National Biological Service as the chief for scientific planning and coordination. He was hired at a government service (GS) level of 15, which pays \$71,664 to \$93,166 a year.

Lesli Gray, who was a staff member on the House Merchant Marine subcommittee on environment and natural resources before the committee was dissolved in the new Congress, joined the Fish and Wildlife Service as a GS-13 legislative specialist. That level pays between \$51,557 and \$67,201 annually.

Monique VanLandingham, a former legislative assistant on the Senate Governmental Affairs Committee, has moved to the National Park Service as a GS-12 legislative affairs specialist, a level that pays from \$43,356 to \$56,362 a year.

Also joining NPS as a legislative affairs specialist is Suzanne Waldron, who was press secretary on the former House Merchant Marine and Fisheries Committee. Waldron is a GS-14, a level that pays \$60,925 to \$79,200 annually. Another GS-14 is Rhoda Glickman, who was executive director for the former Congressional Arts Caucus and is now a public affairs specialist at NPS.

HOUSE RESOURCES URGES ELIMINATION OF NATIONAL BIOLOGICAL SERVICE

The House Resources Committee has recommended not only no increases in Interior Dept. programs under its jurisdiction in FY-96, but elimination of the National Biological Survey and cuts wherever else possible.

The committee's "views and estimates" on the Clinton administration's FY-96 budget request for Interior were sent to the Budget Committee March 17.

NBS is an "unauthorized agency that does not have a congressionally mandated mission," the Resources Committee said. The service should be eliminated and its research role returned to other Interior agencies, the panel said.

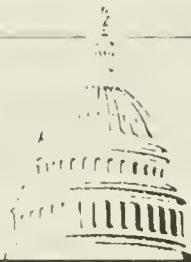
The committee also recommended trimming the administration's FY-96 request for the Bureau of Land Management. In a "time of tight federal budgets," the document said BLM's FY-96 budget should remain at the 1995 level of \$1.2 billion. That is \$52 million less than the \$1.3 billion requested by the administration.

In considering funds for the Mineral Management Service, the panel said it expects "probable legislative changes to the Oil Pollution Act of 1990." Industry and states have heavily criticized the financial responsibility provisions of that statute.

While the administration has asked for an increase of \$1.45 million in FY-96 for oil spill response research and financial responsibility activities, the committee said the likelihood of changes in OPA '90 and private and MMS cooperative research programs already under way led it to propose a net decrease of \$1.5 million from the \$6.44 million FY-95 level approved by Congress.

In addition, while the administration sought an increase of \$4.65 million for the Outer Continental Shelf Land Program, the Royalty Management Program and General Administration, the committee recommended

ATTACHMENT C



GOVERNMENTAL AFFAIRS COMMITTEE

William V. Roth, Jr., Chairman

NEWS RELEASE
(202) 224-2301

Contact: Ginny Koops

FOR IMMEDIATE RELEASE:
March 23, 1995

ROTH SHOCKED AT INCREASE IN RAMSPECK APPOINTMENTS BY CLINTON

WASHINGTON -- Senator William V. Roth, Jr., (R-DE), today said he was shocked and concerned about the most recent quarterly report from the General Accounting Office (GAO) showing an alarming number of Ramspeck appointments made since December 1, 1994. Roth, who is Chairman of the Senate Governmental Affairs Committee, had asked GAO to monitor the number of non-career appointments made after the 1994 election to guard against abuse of the Ramspeck Act, a law which allows Capitol Hill staffers to get jobs within the Executive Branch.

"Given the Clinton Administration's stated priority to downsize the federal workforce, I was disturbed to learn that 139 political and Ramspeck appointments were made during the past 3 months while only 104 such appointments were made during an 11 month period last year," Roth said. "This does not seem consistent with the need to reduce the size of the federal government."

According to the GAO, on average per month, there were 9 non-career appointments made during the 11 month period of January 1, to November 30, 1994. This compares to 46 non-career appointments made per month from December 1, 1994 through February 28, 1995. This is a five fold increase. Of the 139 appointments made since December 1st, 74 were Ramspeck appointments with the majority of the remaining being political appointments.

"While the Ramspeck Act may have a legitimate purpose, I question how, in this era of downsizing, the Executive Branch can accommodate such a large influx of displaced Capitol Hill staffers," Roth said. "I look forward to additional reports from GAO about future increases in non-career appointments."

Last November, Roth had asked Comptroller Charles Bowsher to investigate potential personnel abuses by the Executive Branch arising at a time when 272,900 federal employees are leaving the federal government through buyouts and reductions in force. GAO was to examine appointments made on January 1, 1994 through December 31, 1995.

* Copies of the quarterly report from GAO are available by request.
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United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

MAR 13 1995

Memorandum

To: Solicitor
Inspector General
Assistant Secretaries
Heads of Bureaus and Offices

From: Bonnie R. Cohen
Assistant Secretary - Policy, Management and Budget

Subject: Departmentwide Freeze on Hiring

In view of continued downsizing and consolidation of functions, effective immediately a Departmentwide freeze is placed on hiring, at all grade levels, from outside Interior.

Exceptions to the freeze must be approved by the Deputy Assistant Secretary for Human Resources. Requests should be sent through the Office of Personnel and include a written justification as to the need to fill the position with an outside candidate.

If you have questions or wish further information, please contact James E. Reed, 208-4231 or Cynthia Hancock, 208-6107, Office of Personnel.

PREPARED STATEMENT OF ROBERT M. TOBIAS

Nr. Chairman and Members of the Subcommittee, thank you for the opportunity to share the views of the National Treasury Employees Union on the Ramspeck Act of 1940. As the largest independent union of Federal employees, we are sensitive to both the need for and the consequences of the Ramspeck Act. We do not advocate the repeal of the Ramspeck Act, but believe that changes to the Act are necessary to address the anomalies which can occur under the legislation that are inconsistent with the intent of the Act and adversely affect Federal employees.

In the Federal Government positions are generally granted using competitive procedures. Title V of the U.S. Code, Section 3304 (a)(1) authorizes the President, and thus, by delegation, OPM, to prescribe rules "which shall provide, as nearly as conditions of good administration warrant, for . . . open, competitive examinations for testing applicants for appointment in the competitive service . . ." Section 3302 of Title V provides for the ". . . necessary exceptions of positions from the competitive service." Therefore, generally, competition is the norm and should be deviated from when "necessary" for "conditions of good administration."

The Ramspeck Act provides an exception to the competitive process to legislative employees. The Act was created in 1940 to provide job options for employees who had provided long and faithful service to a Member of Congress who no longer serves. It was thought that these employees had valuable expertise to offer the Government and therefore, if their positions on Capitol Hill were terminated they should be allowed to transfer to a position in a Federal agency with competitive status. Competitive status is granted to an employee under the Ramspeck Act if the following criteria are met:

1. The employee must have worked on-the Hill for 3 years.
2. The employee must be separated involuntarily and their record needs to be good. (Termination based on cause is not permitted.)
3. The employee must meet the basic qualifications for the position.
4. The employee must transfer within 1 year of separation from the Legislative Branch.

Once these criteria are met, an employee can acquire career status, and if qualified be selected for a position in the Federal Government without competition.

As a union we are very sensitive to employee needs. We support the concept behind the Ramspeck Act, which is to provide some job options to long-term Congressional employees faced with unemployment. By nature, jobs within the legislative branch are fraught with insecurity. If we are to continue to attract the high calibre of Capitol Hill employees that we currently enjoy, the Ramspeck Act is necessary to give these employees an opportunity for a job in the Federal Government if they are involuntarily separated.

NTEU has sought the same opportunity for employees in similar situations. NTEU currently represents a group of employees from the Federal Deposit Insurance Corporation who share the vulnerability of Capitol Hill employees, but who lack the Ramspeck protection. Over 10,000 employees were hired during the Banking crisis at the FDIC in the eighties. These employees were also hired through an exception to the civil service rules. Although their appointments were limited to 2 years, the FDIC continually renewed their appointments and thousands of employees served for over 5 years. Many served for over 10 years. Although there are competitive service jobs available in the government for which these employees are highly qualified, these employees may not transfer into these jobs because they lack competitive status. In fact, they are not given any priority consideration over any other members of the public when applying for a job in the Federal Government. We know that this is blatantly unfair and do not believe that the same should be done to legislative employees.

While we believe that the Ramspeck Act has its place, we also believe that the legislation should be amended. In May of 1994, the General Accounting Office examined the propriety of career appointments in the competitive service during the 1992 presidential transition. GAO found various noncompetitive appointments that indicated that the Ramspeck Act was being used in situations that it was not designed to address. These loopholes must be closed.

The GAO examined fifty Ramspeck Act appointments made between January 1, 1992 and March 31, 1993. In eight of these appointments, a 1 year period had elapsed since the employee had served their 3 year period as legislative staff. In

each of these cases the individuals took very short term assignments with Members of Congress. Some of these appointments were as short as a few weeks and upon receiving the appointment the employee immediately began the administrative process to obtain noncompetitive career appointments through the Ramspeck Act. It was obvious in these cases, employees simply renewed their ties to Congress to be eligible for Ramspeck status. These employees broke no laws or regulations.

Although no laws were broken, it seems clear that Congress only intended in the Ramspeck Act to provide protection for employees for 1 year after their 3 year service on Capitol Hill. An employee should not be entitled to bypass the competitive process long after 1 year has expired from their long term tenure on Capitol Hill. This was not the intent of the act. We believe that the Act should be amended to preclude eligibility under these circumstances.

In another Ramspeck appointment examined by the General Accounting Office, an employee used their Ramspeck authority to be placed twice in a Federal agency. The law permits an employee to be placed noncompetitively in the Federal Government within 1 year of involuntary separation from Congress. It does not specifically preclude a second noncompetitive appointment under Ramspeck as long as all the eligibility requirements are met. In the case cited by GAO, the Ramspeck employee was first noncompetitively appointed to a GM 13 position and within 2½ months the employee was appointed noncompetitively to a GM 15. The two grade promotion after 2 months would be impermissible for general career status employees; and therefore we believe it should be impermissible for Ramspeck employees. The Ramspeck Act should be amended to only allow one noncompetitive appointment.

We want to emphasize that we believe the scenarios which we have discussed above under Ramspeck are the exception and not the norm. As we stated earlier we believe that the Ramspeck Act has its place and should not be abolished. We understand that the Office of Personnel Management is currently responsible for providing oversight of agency conversions of former political appointees. Currently, Ramspeck Act appointments are not subject to any routine preappointment review. We believe that Congress should direct OPM to broaden its review process to include Ramspeck appointments. This oversight will go a long way toward ensuring that the Act is being used for the purpose for which it was enacted.

Thank you for the opportunity to express our views on the Ramspeck Act. With the modifications enumerated in this testimony and additional OPM oversight, we believe that the Ramspeck Act still serves an important purpose. We will continue to fight for these same rights for deserving executive branch employees.

PREPARED STATEMENT OF JOHN N. STURDIVANT

On behalf of the American Federation of Government Employees, AFL-CIO, we appreciate this opportunity to provide our comments on the authority provided by the Ramspeck Act of 1940 as is now codified at 5 U.S.C. § 3304(c). AFGE is the largest union representing Federal employees, over 700,000, most of whom are in the competitive service.

Section 3304(c) of title 5, United States Code, permits Congressional employees paid by the Secretary of the Senate or the Clerk of the House to acquire competitive status for transfer to the competitive service if they are involuntarily separated without prejudice after three or more years of service.

At the outset, let me state that we find no reason to either amend or repeal this section. But, before commenting specifically on it with respect to its impact on AFGE's membership and regarding our position as to whether or not the section should be modified or repealed, I believe it is useful to provide some background on the origin of the provision particularly since the arguments made at the time Congress considered it are still relevant today.

At the beginning of President Roosevelt's second term, there was a renewed effort to inculcate merit principles as the basis for the Federal personnel administration system. Staffing based on merit principles had been shelved during Roosevelt's previous administration for several reasons. The Republicans had controlled the Administration for the previous 12 years; consequently there was pressure to transfer power to the Democrats through patronage jobs. In addition, there was the challenge of a worsening economic depression, and the need for speedy and decisive action. Roosevelt responded to this by exempting approximately sixty new Federal agencies which were exempted from the civil service rules. There was little significant opposition to this from proponents of the merit system because most of the agencies were perceived as temporary in nature.

Congress made only sporadic protests to the blanket exemptions from the civil service system. However, by the end of Roosevelt's first term, public pressure had

begun to mount. The extension of the merit system then became a relatively important issue during Roosevelt's second campaign. Recognizing the increasing dissatisfaction just prior to the election, he took two major steps to move Federal personnel administration to a system based on merit principles. First, he issued an Executive Order requiring all unclassified employees who are later placed in the classified service to pass, at a minimum, a noncompetitive examination. Second, he appointed a three-member Committee on Administrative Management, commonly referred to as the Brownlow Committee. Among the things the Brownlow Committee recommended was the extension of the merit system to include practically all non-policy determining positions.

Soon after the Brownlow Commission issued its report, (January 1937) a number of bills were introduced in Congress which would have extended the merit system to cover most positions. Amongst those introduced was a measure by Representative Robert Ramspeck. His bill would have added many positions previously excepted by statute but would have required open competitive examinations for the positions added. This meant that many employees would have been separated from their positions. Obviously, the bill met with a great deal of opposition and was not reported out by the committee of jurisdiction.

The following year, Representative Ramspeck authored another measure which passed, bringing many of the postmaster positions under a modified competitive system. Heeding the opposition to his earlier bill, while allowing the incumbents to take only a noncompetitive examination, the bill required all new appointments to be filled competitively.

One year later, the Congressman introduced the measure which is now commonly referred to by his name, the Ramspeck Act. This measure authorized almost 200,000 additional positions to be placed in the competitive service. Like the postal measure passed the previous year, the Ramspeck Act only required the incumbents to pass a noncompetitive exam. However, new appointments had to be filled competitively.

The Act also contained important provisions relating to position classification and efficiency ratings.

Those who supported the Ramspeck Act proffered three basic arguments:

- the desirability of including positions in the civil service system;
- the impracticality from the standpoint of economy and efficiency of attempting to fill these positions by any other means; and
- the desirability of according the benefits and privileges of permanent status to this large group of employees in the excepted service who had been trained at government expense and who had served capably and loyally for some time.

Those who opposed the measure argued:

- the blanketeting in such a large group violated the very essence of merit system principles in the elimination from consideration of other, passably better qualified individuals;
- the effect on the apportionment quotas; and
- the fact that the large majority of the positions to be covered had been filled by the Democratic party and were therefore, affiliated with the party in power.

All of the arguments against the Ramspeck Act have been negated over time because new appointments for a majority of the 200,000 positions had to thereafter be filled on a competitive basis.

On the other hand, the arguments in favor of the Ramspeck Act are still valid today.

With respect to the particular section pertaining to the attainment of competitive status by certain congressional employees who are involuntarily separated, we note in particular, that these employees have been trained at government expense and have served capably and loyally for some time.

AFGE has consistently averred its support for a personnel system based on merit principles calling for open, competitive examinations. This is the civil service system of today. On the other hand, we have also acknowledged reasonable exceptions. One such exception is the 1986 amendment to the very section providing for special treatment for separated congressional employees. That amendment provides that civilian technicians who are involuntary separated from service as technicians after three or more years of service will acquire competitive status for transfer to the competitive service if the transfer occurs within 1 year. This affords the technicians who are trained at government expense, who have provided competent, loyal and dedicated service to the government to continue to be of service. It not only is a benefit for the technicians, but also a way for the government to optimize its investment in valuable personnel. The same is true in the case of both congressional and judicial branch employees who are accorded competitive status for purposes of trans-

ferring to the competitive service, when after several years of service, they are involuntarily separated through no fault of their own. This provision accords these employees the same treatment as is accorded other employees now in the competitive service and it permits the government to maximize its benefit in retaining the skills and knowledge of employees who have been trained at government expense.

We do not have any statistics with respect to how many people utilize the provisions of 5 U.S.C. § 3304 but we suspect the number is proportionately small. Further, we are not aware of any situations where our members in the competitive service have been adversely impacted by this section.

After having researched the background of Section 3304 and reviewing the arguments made prior to its enactment as well as assessing the present situation, we find no reason to either amend or repeal this section and believe that this is an area which does not need to be explored at this time.

Again, we appreciate your request for our views on this subject.

FEDERAL MANAGERS ASSOCIATION
Alexandria, VA, May 2, 1995

HON. TED STEVENS,
Chairman, Senate Governmental Affairs Subcommittee on Federal Services, Post Office and Civil Service, 601 Senate Hart Office Building, Washington, DC

DEAR SENATOR STEVENS: I very much appreciate your invitation to testify before your Committee on May 8, 1995 regarding the Ramspeck Act of 1940. However, to our knowledge FMA members have not been impacted by this Act. I respectfully decline your invitation to testify.

If I may be of assistance in any way in the future, please do not hesitate to call upon me.

With kindest regards, I am
Sincerely yours,

MICHAEL B. STYLES,
National President.

NATIONAL COUNCIL
SOCIAL SECURITY MANAGEMENT ASSOCIATIONS, INC.
Warwick, RI, April 12, 1995

HON. TED STEVENS,
Chairman, Subcommittee on Post Office and Civil Service, 601 Hart Senate Office Building, Washington, DC

DEAR MR. CHAIRMAN: Thank you for your invitation to testify before the Subcommittee next month regarding our views on the Ramspeck Act. In the twenty-five year history of our association of SSA field office managers and supervisors, we have no experience with individuals "Ramspecking" into the SSA field structure. In fact, we are not aware that there have been many instances where such individuals have joined SSA's central or regional headquarters facilities in this way. As a result, we are unable to prepare a statement for the upcoming hearing which would add meaningfully to a hearing to consider either the benefits or problems associated with the Ramspeck Act.

We very much appreciate your interest in our views and look forward to contributing to the many upcoming discussions on civil service as you take up other issues which impact Federal employees. We understand you are planning hearings on the subject of Federal retirement benefits, possibly also in May, and we would especially like to contribute our views by appearing before the Subcommittee at that time.

Thank you for your leadership in these many areas involving equity to Federal employees, the quality of the Federal workforce, and our ongoing ability to serve the American public.

Very truly yours,

MARY CHATEL,
President.

PROFESSIONAL MANAGERS ASSOCIATION
Washington, DC, April 12, 1995

HON. TED STEVENS,
Chairman, Subcommittee on Post Office and Civil Service, 601 Senate Hart Office Building, Washington, DC

DEAR CHAIRMAN STEVENS: Thank you for inviting the Professional Managers Association to testify before the Senate Subcommittee on Post Office and Civil Service on the Ramspeck Law. In as much as our membership has not indicated having any problems with regard to the Ramspeck Law, we are not in a position to provide you with information.

However, we continue to be deeply interested in many of the issues which come before your Committee and we would be pleased to testify at future hearings. We are especially interested in providing input on the Federal employee retirement systems.

We commend you for your efforts in protecting the interests of Federal managers and management officials and look forward to working with you in the near future.

If we can be of any assistance in the future please contact me at (202) 927-3990.

Sincerely,

HELENE A. BENSON,
President.



SENIOR EXECUTIVES ASSOCIATION

P.O. BOX 7610 • BEN FRANKLIN STATION
WASHINGTON, D.C. 20044
202-927-7000

June 7, 1995

The Honorable Ted Stevens
Chairman
Post Office and Civil Service
Subcommittee
Committee on Governmental Affairs
SH-601
Hart Senate Office Building
Washington, D.C. 20510

Re: SEA's Comments on Changes to the Ramspeck Act of 1940,
5 U.S.C. §3304(c)

Dear Mr. Chairman:

As discussed with your staff, we are pleased to submit SEA's comments about the proposed recommendations to amend the Ramspeck Act. We request that these comments be included in the record of the hearing held by your subcommittee on this issue.

Since congressional employees are not eligible to utilize the Ramspeck Act to gain career Senior Executive Service positions, we have had only minimal experience with the manner in which the Act has been utilized. However, we have reviewed the GAO report (GGD-94-66, May 1994) concerning some of the problems that have occurred, and the recommendations of the GAO. It is obvious that GAO and OPM uncovered violations of the merit system in Ramspeck Act appointments which occurred during the last Presidential transition period. GAO identified specific Ramspeck Act appointments made under conditions that do not further the purposes of the Act and suggested that Congress amend the Act to more clearly specify the circumstances under which the use of this appointment authority may not be appropriate. We agree with this recommendation. We suggest that Ramspeck authority be limited to congressional staff who have at least one year of continuous service in Congress prior to seeking or accepting a competitive position in the Executive Branch under the authority of the Ramspeck Act.

GAO also recommends that to ensure oversight of Ramspeck Act and White House service appointments, Congress may also want to consider directing OPM to include such appointments in its current conversion review process. We have a problem with this

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recommendation. The staffing reductions at OPM threaten to undermine the ability of that agency to police the merit system, and we believe OPM simply will not have the ability to conduct a prior review of these appointments. Therefore, we recommend that all Ramspeck appointments to career Executive Branch positions should be "probationary" for one year. During this one year period, OPM would have sufficient time to conduct a post review before the appointment became final for MSPB appeal purposes.

We also agree that such pre-appointment (or post-appointment) review should cover individuals currently exempted on the basis of prior career service or excepted service appointments. Again, we believe that making such appointments subject to a one year probationary period would allow OPM enough time to conduct a post-appointment review, since a pre-appointment review might unreasonably hold up the appointment, or be beyond OPM's capability.

GAO also recommended that during future Presidential transitions, the Director of OPM suspend all SES appointment processing. While this is bound to cause some grief for career appointees who have been waiting for some time for the finalization of their appointments, on balance we believe it is a good recommendation. Our concurrence with the recommendation is based upon quick legislative action. Such action would allow prior notice to agencies and OPM, which would give them the opportunity to finalize career SES appointments pending prior to the November 22 election. This would minimize the number of career SES appointments which would be held up until after January of 1997 in the next election cycle. We did receive complaints from SES candidates whose appointments were held up during the 1992-93 Presidential transition, but we also received complaints from those who believed that some appointments were approved which should not have been finalized prior to the end of the transition period. On balance, with sufficient notice, we do not believe that such a moratorium would be unduly burdensome.

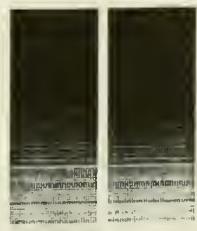
We thank you for the opportunity to provide our comments. If the subcommittee has need of any further information which we might be able to provide, we would be happy to do so.

Sincerely,

Carol A. Bonosaro

Carol A. Bonosaro
President

A. Jerry Shaw
A. Jerry Shaw
General Counsel



People Eligible for Noncompetitive Appointments

- ✓ Legislative/Judicial/White House staff
- ✓ Vietnam & Post-Vietnam era Veterans
- ✓ General Accounting Office employees
- ✓ Disabled Veterans
- ✓ Secret Service employees involved in protecting the President
- ✓ People who are 30% or more disabled
- ✓ Employees of TVA, NRC, DoD intelligence agencies and DoD Non-appropriated Fund
- ✓ Present & former Foreign Service employees
- ✓ Presidential Management Interns

- ✓ DEA Criminal Investigators
- ✓ Employees of the US Postal Service & the Postal Rate Commission
- ✓ Employees of the Administrative Office of the US Courts
- ✓ Command pilot, pilot & mission specialist trained in the NASA Astronaut program
- ✓ Graduates of cooperative education programs
- ✓ National Guard Technicians
- ✓ Scientific & Professional personnel
- ✓ Former VISTA & Peace Corps volunteers and present & former Peace Corps staff
- ✓ Former employees of the Panama Canal Commission & the Panama Canal Employment Commission



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